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IN THE

Supreme Court of the United States

October Term 1942.

No. 458

GEORGE SYLVESTER VIERECK,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION OF GEORGE SYLVESTER VIERECK FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

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IN THE

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No. .....

GEORGE SYLVESTER VIERECK,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION OF GEORGE SYLVESTER VIERECK FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT ENTERED SEPTEMBER 21, 1942 BY THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AFFIRMING A SENTENCE OF CONVICTION ENTERED MARCH 13, 1942 BY THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA UNDER THREE COUNTS OF AN INDICTMENT CONTAINING FIVE COUNTS.

The Registrations.

This indictment recites in the first paragraph thereof (R-1) that it was brought by a Grand Jury during the October 1941 Term which had been duly empaneled, sworn and charged in the July 1941 Term of the District Court of the United States for the District of Columbia, and that not having completed its investigations begun in said term, it was continued in the October 1941 Term by order of the said court pursuant to Section 284, Judicial Code (28 U. S. C. 421), which is the statute applicable to United States District Courts generally. No reference was made to the fact that in the Act of March 3, 1901, Chap. 854 (31

Stat., 1222), as amended by the Act of April 19, 1920, Chap. 153 (41 Stat., 559), (Title 11, Section 1406, D. C. Code 1941 ed.), there are specific and restrictive limitations that the term of a Grand Jury in the criminal court in the District of Columbia "shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court."

The indictment is in five counts. Two of the counts, Nos. I and IV, were stricken out on demurrer (R-56). These two counts are respectively applicable to one original registration statement filed by petitioner as the agent of two foreign principals, and the other as agent of a third foreign principal (R.-20-26, 37-41).

The other three counts, Nos. II, III and V, under which petitioner was tried before a jury, convicted and sentenced, are respectively applicable to three supplemental registration statements filed by the petitioner as agent for two of the foreign principals during successive six months' periods following the filing of the original registration statement as agent for these two foreign principals (R-5-11, 15-19). No supplemental registration statement was filed by petitioner as agent for the third foreign principal because the first six months' period after filing the original registration statement had not elapsed when the indictment was returned.

The charge in each of the five counts of the indictment is that petitioner had "unlawfully, willfully, feloniously and knowingly" omitted to state "as part of his business and activities" for the respective periods of time stated in each count, certain activities also named in the respective five counts when he gave his answers to Paragraphs 11 of the two original registration statements and the three supplemental registration statements—on forms prescribed by the Secretary of State and furnished by him

to the petitioner—which required agents for foreign principals to give a:

> "Comprehensive statement of nature of business of registrant."

Petitioner answered in his original registration statement for the two foreign principals, in response to the aforesaid requirement in Paragraph 11 of the form, that he was an "Author and Journalist" (R-21). He answered in response to the identical requirement in the second original registration statement filed for the third foreign principal that he was an "Author, Editor and Publicist" (R-38), and it was established at the trial that for many years the petitioner had been a prolific writer of books and magazine articles (R-168-177). The contracts of employment by the two foreign principals, which were attached to the first original registration statement, showed that petitioner was to perform the work of a writer and author for the Munich newspaper (R-24-25) and for the German Library of Information (R-25-26). The latter contract was later revised to some extent (R-48-50). The contract of employment attached to the second original registration statement showed that petitioner was to have a book published for the third foreign principal (R-41).

The contracts between the German Library of Information and petitioner were terminated and cancelled by the parties on July 2, 1941 (R-52-53), and the Secretary of State so advised by petitioner in letter of July 16, 1941 (R-51). The contract with the Munich newspaper was cancelled and the Secretary of State so advised by petitioner in letter of September 8, 1941 (R-90). Thus, the agency relationship of petitioner had terminated long before Pearl Harbor and the declaration of war between the United States and the German Reich. The contract with the third foreign principal was completed by the publication of the book.

The three supplemental registration statements which were respectively the subject of Counts II, III and V of the indictment were filed within the appropriate time limits during the interval between the filing of the first original registration statement for the Munich newspaper and the German Library of Information and the cancellation of the agency relationships as above stated. Each of these supplemental registration forms contained printed instructions that if the answers to any of the paragraphs thereof, except paragraph 1, would be the same as answers made to similar questions in a previous registration statement filed with the Secretary of State, the word "same" could be used in replying to said paragraphs of the supplemental forms (R-27, 30-31, 44).

The petitioner used the word "same" in replying to Paragraphs 11 of the three supplemental forms, thus, in effect, stating in reply to the requirement that he give a "Comprehensive statement of nature of business of registrant" that he was an "Author and Journalist" (R-28, 31, 45). When he became obligated to the third principal to publish a book for such principal, petitioner answered Paragraph 11 of the registration statement for that agency with the words "Author, Editor and Publicist" (R-38), as above stated. The petitioner tendered proof, and the tender was rejected that out of approximately 560 registration statements on file in the State Department approximately 500 of such statements contained answers to paragraphs 11 thereof in the "same form and in the same manner that this defendant did" (R-180). While the State Department was not required to do so, at no time in the approximately 18 months while some of these statements by petitioners were on file and others were being filed did that Department even suggest to him that in its view his replies to paragraph 11 were not complete.

The first and second supplemental registration statements were subscribed to, and sworn to by petitioner before Notary Public Emil Morosini, Jr. (R-38, 34), and so was the original registration statement for the third foreign principal (R-41). The record shows that this Mr. Morosini was petitioner's chief trial counsel, and that at least one of the supplemental registration statements was forwarded by this attorney to the Secretary of State for filing (R-38-43, 87).

Upon conviction of petitioner by the jury for having failed in the three supplemental registration statements in answer to the requirement of Paragraphs 11 to give a "Comprehensive statement of nature of business of registrant" to state "as a part of his business and activities" the activities, or some of them charged in Counts II, III and V of the indictment, the District Court of the United States for the District of Colmubia, Letts, J., sentenced the petitioner on March 13, 1942 to imprisonment in a penitentiary for terms of 8 months to 2 years under each of the three counts, with the terms to run consecutively and not concurrently; to pay a fine of $500.00 under each of the three counts; and to pay the costs of the trial (R-325).

Notice of appeal was filed on the same day; application for bail was made and denied (R-323); the appeal was argued in the United States Court of Appeals for the District of Columbia on June 1, 1942 (R-319); and by a judgment dated September 21, 1942, the said Court affirmed the conviction and sentence (R-344).

This petition is for a writ of certiorari to review said judgment.

Opinion Below.

There was no opinion in this case in the District Court of the United States for the District of Columbia. The

opinion dated September 21, 1942 by the United States Court of Appeals has not been reported as yet, but it is contained in the Record at pages 320-343, inclusive.

Jurisdiction.

The jurisdiction of this Court for a writ of certiorari to review the judgment of September 21, 1942 by the United States Court of Appeals for the District of Columbia is invoked under Section 240 of the Judicial Code, as amended (28 U. S. C., 347). See also Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

Questions Presented.

1. Whether the entire indictment of petitioner is not a nullity, void and of no effect and the rights of the petitioner infringed under the Fifth Article in the Bill of Rights to the Constitution of the United States because the Grand Jury bringing in the indictment during the October 1941 Term of the District Court of the United States for the District of Columbia had been impaneled, sworn and charged in the July 1941 Term of said court and the said Grand Jury had been continued to sit during the October 1941 Term by order of said court pursuant to Section 284 of the Judicial Code (28 Stat. 421) applicable to United States District Courts generally while specific provision exists for the United States District Court for the District of Columbia in the Act of March 3, 1901, 31 Stat. 1222, as amended by the Act of April 19, 1920, 41 Stat., 559, (Tit. 11, Sec. 1403, D. C. Code, 1941 ed.) which states that the Grand Jury Term in the District of Columbia shall begin and end with each term of the Criminal

Court of said District of Columbia unless sooner discharged by the court.

2. Whether the rights of the petitioner have not been infringed under the Fifth and Sixth Articles in the Bill of Rights to the Constitution of the United States by the conviction and sentence of the petitioner under the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat., 1244), and the supplemental registration forms issued by the Secretary of State thereunder which required in Paragraph 11 that the petitioner as registrant of a foreign principal give a: "Comprehensive statement of nature of business of registrant" and petitioner had answered in response thereto: "Author and Journalist."

3. Whether the petitioner by his answer: "Author and Journalist" to the requirement of Paragraphs 11 of the three supplemental registration forms which he filed requiring: "Comprehensive statement of nature of business of registrant" did not give a generic answer fairly and reasonably responsive to a requirement which was itself generic in character.

4. Whether the rights of the petitioner have not been infringed under the First Article in the Bill of Rights to the Constitution of the United States by the interpretation placed by the courts below on the aforesaid Act of June 8, 1938, as amended by the Act of August 7, 1939 that the petitioner in a time of peace, when the United States was not a belligerent, lost his freedom of speech and freedom of the press on his own behalf as an American citizen unless he reported to the Secretary of State his exercise thereof because he was during such time the registered agent of foreign principals.

5. Whether under the aforesaid Act of 1938 as amended by the Act of 1939 petitioner in response to Paragraphs

11 of the three supplemental forms issued by the Secretary of State requiring that a registrant for a foreign principal give a: "Comprehensive statement of nature of business of registrant" was required to report that he was engaged on his own behalf, and not on behalf of any foreign principal, in the activities, charged in Counts II, III and V of the indictment, intended by him to assist in maintaining the neutrality of the United States Government which was the declared policy of the Act of November 4, 1939, c. 2 (54 Stat., 4), (Tit. 22, Subchap. 2, Secs. 441-452, U. S. Code) until it was substantially repealed by the Act of November 17, 1941, c. 473, 55 Stat., 764.

6. Whether the language of the aforesaid Act of 1938 as amended by the Act of August 7, 1939, requiring the filing of supplemental registration statements on forms prescribed and issued by the Secretary of State and providing punishment for failure to state any material fact required by such form is not in conflict with the fundamental requirements of American criminal law that such statute must be definite and certain and must clearly state the standard of conduct, the violation of which constitutes a crime.

7. Whether if the aforesaid Act of 1938 as amended by the Act of 1939 as it related to, and required the filing of supplemental registration statements, on forms prescribed by the Secretary of State, was indefinite and uncertain and failed to clearly state a standard of conduct, the violation of which constituted a crime, such indefiniteness and uncertainty were removed and a definite standard of conduct prescribed by the Secretary of State in the supplemental registration forms and regulations which he issued under said Act as amended. If so, whether such defects in a criminal statute may be corrected by administrative regulations and forms.

8. Whether the constitutional rights of the petitioner were not impaired and infringed by the ruling of the trial court admitting in evidence against the petitioner on charges that he omitted to state "'as a part of his business and activities" in 1939 to 1941, certain activities in response to Paragraph 11 of the three supplemental registration forms requiring "Comprehensive statement of nature of business of registrant", a book which petitioner had published in 1930 describing propaganda activities of the English, French, German and United States Governments during a part or all of the first World War period from about 1913 to about 1919.

9. Whether in addition to a sentence of imprisonment and a fine under Section 5 of the aforesaid Act of June 8, 1938 imposed by the trial court on petitioner such court could add to the penalty the costs of the trial under the terms of a 1792 statute, 1 Stat. 277 (28 U. S. C. 822).

Statutes Involved.

The statutes directly involved are the Act of June 8, 1938, c. 327, (52 Stat., 631), and the amending Act of August 7, 1939, c. 521, (53 Stat., 1244), (22 U. S. C., 611-616). Also, involved is Public No. 532, 77th Congress, approved April 29, 1942, which covers the same subject matter and corrects the constitutional defects which petitioner believes existed in the two prior 1938 and 1939 statutes. These statutes have been printed in the appendix to the brief in support of this petition.

Statement of the Case.

The petitioner is an American citizen and has been such since the naturalization of his father in 1901 (R-22). His home is at 305 Riverside Drive, New York City (R-21). Prior to our entry into the War against Germany in 1917;

petitioner ~~was an employee of~~ worked with the German publicity staff in this country, but after we entered that war he assisted in Liberty Loan drives and received official thanks for "effectiveness of his patriotic advice" (Gov. Ex. 12, p. 167, being his book, *Spreading Germs of Hate*).

He is an author of considerable note, having written many books and magazine articles since at least 1907 (R-168). It was conceded by the chief prosecuting attorney that the "Government has never maintained anything other than this man was a prolific writer * * *. I am willing to concede that he wrote a lot of articles, or whatever the number is, for Liberty" (R-175).

The petitioner has not been charged with any crime *malum in se*. He has not been charged with any crime *malum prohibitum*. It is not claimed in the indictment, nor was it claimed by the prosecution at the trial of the petitioner, that any of his alleged activities, which he did not report in answer to Paragraphs 11 of the three supplemental registration statements, were in conflict with, or contrary to any law of the United States, or that any of them were critical of, or disloyal to the United States.

The alleged crime consists in the fact that he did not report "as a part of business and activities" the activities set forth in the three counts (Nos. II, III and V) of the indictment in response to the requirements in the said Paragraphs 11 of the three supplemental registration forms that he give a: "Comprehensive statement of nature of business of registrant."

Without repeating the statements contained in the first paragraphs of this petition (Pp. 1-5 herein) the original registration statement was filed with the Secretary of State on September 26, 1939 (R-20) as reporter and writer for the Munich newspaper—after inquiry by petitioner in letter of September 11, 1939 (R-78) of the State

Department whether in such capacity he should register as the agent of such foreign newspaper and after having been advised in the affirmative in reply of September 20, 1939 (R-79-80).

By letter of ~~September 28~~ October 7, 1939, the petitioner notified the Secretary of State of his contract with the Germany Library of Information and inclosed a copy, ~~in the German language~~. Receipt thereof ~~was acknowledged by the State Department in letter of September 30, 1939 with request for an English translation (R-80-81). Petitioner sent the English translation which~~ was acknowledged by the State Department in letter of October 2, 1939, with the statement that the contract had been filed with the registration statement as agent for the Munich newspaper (R-82) and it was so attached (R-25-26).

Within a period of six months and thirty days after the filing on September 26, 1939, of the original registration statement the petitioner was required to file his first supplemental registration statement, as provided in Section 2 of the amending Act of August 7, 1939. This supplemental registration statement was filed on or about April 26, 1940 (R-26-34). The second supplemental registration statement was filed within six months and thirty days thereafter, or on October 25, 1940 (R-30-34). The third registration statement was filed within six months and thirty days after the second one was filed, or on April 25, 1941 (R-44-47).

It is Paragraphs 11 of these three supplemental registration statements and certain alleged activities during the respective periods of time covered thereby which are the subject of the respective Counts II, III and V of the indictment (R-5, 7, 15).

Further, the period of time from September 26, 1939, when the first original registration statement was filed,

to April 25, 1941, when the third supplemental registration was filed, was covered by the Neutrality Act of November 4, 1939, c. 2 (54 Stat., 4), (22 U. S. C., 441-452), except for the short period from September 26 to November 3, 1939. During all of the period from September 26, 1939 to April 25, 1941, the United States Government was officially at peace with all nations, including the German Reich. This case thus should be viewed in the light of peace between the United States and the rest of the world and not in any war hysteria which came after the agency contracts were cancelled and our nation became a belligerent.

This Court will take judicial notice of the fact that during a part of this period from September 26, 1939, to April 25, 1941—covered by the three supplemental registration statements filed by petitioner—a political campaign was waged for the Presidency of the United States and that the candidates of both the two principal political parties advocated the keeping of the United States out of the war, then raging on three continents. It was not until the act of November 17, 1941, c. 473 (55 Stat., 764), that the Neutrality Act of November 4, 1939, was substantially repealed and until the Act of February 7, 1942, c. 46 (56 Stat., 82), that Lend-Lease Aid was provided for the Allied Nations. Petitioner's contracts were cancelled long before the declaration of war between the United States and Germany on December 8, 1941—the one with the German Library of information having been cancelled on July 2, 1941 (R-52-53) and the one with the Munich newspaper on September 8, 1941 (R-51).

It thus plainly appears from the record facts that the petitioner was not an agent for any German principal at the time the United States declared war on Germany and that save for the comparatively short period from September

26, 1939, to November 3, 1939, the agency was during a period covered by the Neutrality Act of November 4, 1939.

It having been conceded by the prosecuting attorney, as above stated, that petitioner was a prolific author and journalist (R-175) and it having been established by the evidence that such was the fact (R-168), it would seem to be clear that the petitioner was correct in stating that he was an "Author and Journalist" in replying to Paragraphs 11 of the three supplemental registration statement forms requiring a: "Comprehensive statement of nature of business of registrant."

Also, it would seem to be equally clear from the contract with the Munich newspaper, which was attached to the original registration statement (R-24-25), and from the first contract with the German Library of Information (R. 25-26), which the State Department attached to that registration statement (R-82), as well as the revision of the latter contract which was attached to the third registration statement filed April 25, 1941, (R-44-50) that the petitioner was employed strictly in his capacity as an author and journalist. This conclusion is supported by a letter of October 7, 1939, from petitioner to the State Department, or long before this indictment, wherein he stated, consistently with his contract with the German Library of Information, that:

> "I do not act as a Public Relations Counsel, as a press agent, or as a 'servant'. I do not edit the publication. I do not determine its policy. My job is merely that of a rewrite man on a newspaper. I revise material given to me and lick it into shape from the point of style and journalism" (R-83-84).

This conclusion is further supported by the settlement agreement of July 2, 1941, between the petitioner and the German Library of Information where it is stated that Viereck was being paid for his services as literary adviser for the said German Library of Information the sum of

$2500, as his salary for July, and was being allowed $7500 representing salary for three months additional by reason of the cancellation of the contract and was being paid certain extra items for writing a preface and editing a book on Social Security and Labor Legislation in Germany as well as reimbursement of two items paid to others for literary work which they performed for the said Library of Information (R-52-53). No evidence contrary to such conclusion was presented to the jury.

The contract between petitioner and the Munich newspaper shows that petitioner was to gather newspaper and other written material, which he might think of interest to said newspaper, and to write articles and to send both to the newspaper in Munich. The contract did not require the petitioner to publish or cause anything to be published in the United States for said newspaper (R-24-25). The Government did not establish, or attempt to establish in the trial that petitioner wrote for publication in the United States anything for said newspaper or that he had anything published in the United States for said newspaper or that any of his activities alleged in the indictment were for said newspaper.

So far, the evidence before the jury is entirely consistent with counsel for petitioner's theory of the case that petitioner was an "author and journalist"; that he was employed by the Munich newspaper and the German Library of Information as an author and journalist; that he performed for them the duties for which he was employed and these duties only; and that when asked in Paragraphs 11 of the three supplemental registration statement forms to give a "Comprehensive statement of nature of business of registrant" he correctly answered "Author and Journalist."

Fundamentally it may be accepted as a truism that "business" is "activity", the activity by which an income is

earned or attempted to be earned. Also, that not all "activity" is "business" because a man may be, for instance, a vestryman in a church which is an "activity" but certainly not a "business."

A vast amount of documentary evidence and testimony of witnesses was offered by the prosecution concerning certain alleged "activities" of the petitioner—but no evidence whatever was offered that such "activities" were the "business" of petitioner; that is, that he obtained a single dime therefor from any of his foreign principals or that he was acting as an agent for any of his foreign principals from which he received the compensation stipulated in his contracts for the performance of duties, or tasks, or activities different to those stated in said contracts.

Indeed, under the instructions of the trial court to the jury it was not necessary for the prosecution to have shown that in the performance of such duties petitioner was acting as the agent of any foreign principal or for the jury to find that he so acted. ~~Under such instructions, to which petitioner duly excepted, it was not necessary for the jury to find that he so acted.~~ Under such instructions, to which petitioner duly excepted, it was not necessary for the jury to find that he acted as the agent of any foreign principal (R-101-114).

Further the trial court rejected petitioner's prayer for an instruction which would have required the jury to find that in performing the activities alleged in the remaining three counts of the indictment the petitioner was acting as the agent of a foreign principal (R-96-101).

Under these instructions to the jury, it is not open to an appellate court to speculate, as was done by the court below in its opinion (R-322) that "The jury may have believed, however, that all or some of these activities were carried on by the defendant in his capacity as an agent for foreign

principals." Further, under such instructions, which told the jury, in effect, that it need not determine whether the alleged activities were or were not performed for a foreign principal; that it was sufficient to convict the petitioner if the jury found that he engaged in such activities (R-101-114); it is not open to an appellate court to state that: "There was much more evidence from which it could be inferred that defendant was carrying on his clandestine work in behalf of the foreign principals" (R-334).

The appellate court below refers to no direct evidence that was presented to the jury to the effect that petitioner was acting as the agent of any foreign principal in connection with the activities charged in the indictment. In fact, that court admitted in its opinion that: "The case was presented to the jury on the basis of a failure to disclose any political activity, it was a failure to disclose a part of his business" (R. 334). Again, "Under our construction of the Act it was necessary for the defendant to reveal these four kinds of political activity even if they were done entirely on his own (R-334). The court reached its "construction" by quoting Section 3(c) of the 1938 Act as amended by Section 2(c) of the 1939 Act and saying:

> "There might be some question as to whether in this provision the phrase 'as agent of a foreign principal' designates the type of activities or the class of persons. Defendant's arguments, based on the Act, did not raise the issue and as a result the Government's construction did not develop this possible point. As the 1938 Act is printed there is more difficulty of construction because such person(s) is in the plural.
>
> "If 'as agent' designates the activities, *i. e.*, a statement of the agent activities, it would have been better for 'agent' to be in proximity with 'activities'. If 'as agent' designates the class of persons, then it is somewhat redundant for it is abundantly clear who 'such persons' are, and grammatically it might have been well to introduce 'agent(s) of a foreign principal' with 'who are.'

"Since in the 1939 amendment 'person' is in the singular as is 'agent', and since it seems better construction of language to have 'as agent' designate the class of persons rather than the type of activities, we interpret the provision as follows: a statement of the activities of such person (an agent of a foreign principal) during such six months' period. This means that the phraseology is a little tautological, but we assume that is the result of seeking clarity, and in our view the redundancy being slight, a strained construction to avoid it is not justified. Thus we conclude that subsection 3(c) authorizes the Secretary to require a statement of all activities (at least the political kind with which we are concerned) of a registrant" (R-324).

The petitioner takes sharp issue with such judicial rewriting of the amended subsection 3(c) of the Act and insists that if such rewriting is necessary to clarify the statute, it alone, is sufficient to establish the indefiniteness and uncertainty of said amended subsection 3(c) which requires that in the supplemental registration statement the Secretary of State may require, on a form prescribed by him, among other things:

"(c) A statement containing such details required under this act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

The Secretary prescribed in Paragraphs 11 of the supplemental registration forms that he wanted a "Comprehensive statement of nature of business of registrant"—*nothing whatever about activities which were not the nature of his business as agent of a foreign principal.* The Secretary was not authorized by said subsection to call for all the activities of an agent but only for his activities "as agent for a foreign principal." The petitioner could not rewrite the amended subsection 3(c) as the court below has done. He had to take both the said subsection and Paragraph 11 of the form as he found them and then attempt to answer the said paragraph.

Having judicially rewritten the statute, as shown by the above quotation from the opinion, the court stated therein that:

> "defendant's business on which evidence was taken and which he did not disclose over the 18 months' period may be put into four classifications: (1) his direction and control of Flanders Hall, a publishing institution, interested in political subjects; (2) his organization of, and activities in behalf of, Make Europe Pay War Debts, Islands for War Debts, and possibly War Debts Defense, Committees, all with a political twang; (3) his work in helping a late Senator prepare his expression of views on political topics; (4) his assistance in disseminating political views of Congressmen coinciding with his own, or coinciding with, or at least of no hindrance to, those of his foreign principals from whom he was receiving a large income" (R-328).

Petitioner accepts the four classifications, but not the characterizations made by the court below of any of them. Voluminous documentary evidence and much testimony was introduced by the prosecuting attorney as to each of these four classifications, interspersed with his reading to the jury of isolated sentences and paragraphs from petitioner's book, *Spreading Germs of Hate* which was published in 1930 concerning propaganda by the British, French, Germans, and Americans during the period from about 1914 to about 1919 (R—132, 133, 134, 138, 156-159), and which was admitted in evidence over the objections of petitioner (R-123).

Taking up each of the four classifications, briefly, petitioner loaned some $22,500 to Flanders Hall under a written agreement of August 3, 1940, which reserved to petitioner the veto power over any proposed commitment or expenditure by the corporation (R-249-251). Government witness Hauck admitted under cross-examination that petitioner loaned the money, with right to purchase control of the company and that he had "repeatedly said that he ex-

pected his publishing house, if he started a new one, or if he became more active in Flanders Hall, that it had a good chance of growing into a prominent publishing house in the future" (R-252). This witness, upon re-direct, testified that he believed a commercial publishing house could be built out of his company, Flanders Hall (R-252).

This company published several booklets, or books, from manuscripts furnished or obtained by petitioner but it was a losing venture because few of the books could be sold. Petitioner was finally repaid by Flanders Hall $3500 at one time and $1000 at another (R-256-257). This is not the first instance of a "shoemaker failing to stick to his last" but the money was petitioner's money and no evidence whatever was offered by the prosecution that a dime of it came from any of his foreign principals or that in making the loan petitioner was acting for any foreign principal.

It is conceded by counsel for petitioner that some of the booklets should not have been published under the names of fictitious authors or that there should have been any attempt to conceal the source of their texts, as condemned by the court below. However much this may have violated high standards of ethics and morals, it certainly was not a crime for which the petitioner could be convicted under the indictment and the statute.

While the prosecution did not offer any evidence to that effect, and the petitioner was not permitted by the rulings of the trial court to do so (R-188-195), it is nevertheless a matter of common knowledge, of which this Court may take judicial notice, that there were individuals, groups, and committees—one of the latter being headed by a distinguished and patriotic man high in public office—which were actively and vigorously—through full page advertisements in the press and otherwise—urging that the United

States defend itself by aiding the Allies. They, too, were American citizens and it was just as legitimate and proper for those opposed to such course of action, including the petitioner, to oppose it at the bar of public opinion.

As a legitimate argument in support of such opposition, they could properly show how England had governed subject peoples in Egypt, India, and elsewhere and they also could show the condition of the poorer people in England itself. In general, such an attempt at making the showing was the theme of the booklets printed by Flanders Hall for sale to the American public.

No evidence was offered by the prosecution to show that the subject matter of any of the booklets was false. Publications under fictitious names is not unusual. It was testified at the trial by the executive editor of *Liberty* magazine that:

> "It is a very common custom when people write on subjects a little out of their line, or when they write a great deal, to avoid having their own name appear too monotonously, they use another name. It is very common practice" (R-174-175).

The court below complained that the correct source of the booklets had not been shown (R-330). It is not reasonable to suppose that such material as was contained in these booklets could have been obtained from English sources, in the form most effective for use in opposing the position taken by other groups, that the United States become an active participant in the war on the side of England. So far as this indictment is concerned, the source material for the booklets could have been taken from any source. Such taking would not constitute a crime under the 1938 Act as amended.

As to the organization by petitioner of the War Debts Committees named in the above extract from the opinion, the only evidence introduced by the prosecution that peti-

tioner had anything to do with such organization is the testimony of a minor clerk employed by one of the Committees to address envelopes bearing Congressional franks and containing printed extracts from the Congressional Record. She did not testify that she had ever seen the organization papers for these committees or that she had any personal knowledge that petitioner had organized the Committee. Her testimony on that phase of the matter is that the petitioner told her in his apartment in New York City, in the presence of her husband, who was also employed by the Committee, that he, the petitioner, and three other named persons "had organized the 'Make Europe Pay War Debts Committee'." Her husband's testimony is in conflict with her testimony on this point. He testified that petitioner "told us, rather, that Senator Lundeen, Linn Gale, and Prescott Dennett had formed the Committee, and to the best of my knowledge, Mr. Viereck said that it was his idea." This testimony of both witnesses is in the record (R-288). These witnesses also testified that they had seen petitioner at the Washington office of the Committee and that Mr. Dennett had talked with petitioner and had sent petitioner a box of papers. Also that petitioner complained about the box being sent to him (R-141-149).

This evidence, in the judgment of petitioner, does not establish that petitioner "organized" any one of the War Debt Committees, much less all of them nor that petitioner's interest therein was for his foreign principals. No connection whatever between these Committees and any foreign principal or between petitioner and any foreign principal concerning these Committees was shown or attempted to be shown by the prosecution to the jury. There was a good reason why this was not done. There was no such evidence.

Again, it was legitimate argument for those who were opposed to the United States being involved in the war on

the side of England to show that England had welshed on her debts to the United States for a large part of the moneys loaned by our Government to England during the first World War and for supplies furnished her, both the money and the supplies being furnished by the United States to England after our Government became her ally in that war.

With respect to petitioner's activities 3 and 4, as summarized by the court below, again there was no showing that petitioner engaged therein for and in behalf of any foreign principal or that such activities were his business, or even a part of his business from which he derived or expected to derive an income. The Senator and Congressmen held views similar to those of petitioner, that the United States should remain neutral, in accordance with the Neutrality Act of November 4, 1939. Their views had been and were being stated on the floors of Congress in the form of speeches and in material from publications which were reprinted in the Congressional Record. No evidence was presented by the prosecution that any of these speeches and other material was disloyal or hostile to the United States Government. Likewise no evidence was presented, that petitioner's activities with respect to disseminating such views in the form of reprints from the Congressional Record were for his foreign principals or that he received one dime therefor.

In fact, in only one case; that of mailing reprints from the Congressional Record of an address by Senator Lundeen, was it established by the evidence that petitioner had any direct part in such mailing out of the addresses and other material reprinted from the Congressional Record. In that instance he spoke with one Hill, a clerk in a Congressman's office, about mailing out the address. Hill engaged in such work for hire in his off-duty hours. This conversation fol-

lowed one between the Senator and the clerk on the same subject (R-279-283). Some of the testimony of this clerk who had been convicted of perjury is contradicted by the testimony of the Congressman in whose office he worked (R-283-286).

Whatever may have been the details of this conversation, the substance of the testimony is that petitioner did contact this clerk, stated that he was only an intermediary for Senator Lundeen, and that the clerk should look to the Senator for the details of mailing the copies and for payment for the work. There was much testimony by this clerk Hill as to other reprints from the Congressional Record which he purchased and mailed out, but no evidence that a single dime of the money came from either petitioner or his foreign principals. There was also testimony by the witnesses Webbers as to reprints being mailed out by the War Debts Committee but again there was no evidence that a single dime of the cost was paid by the petitioner or by his foreign principals or that petitioner authorized or instructed such reprints to be mailed.

The petitioner tendered proof, which was rejected, both as to the common practice of obtaining reprints from the Congressional Record and the number of reprints of addresses or material inserted in the Congressional record by interventionist members of the Senate and House of Representatives which had been obtained from the Government Printing Office (R-195-199).

There was nothing sinister and improper in obtaining reprints from the Congressional Record and mailing them by both interventionists and non-interventionists to prospective readers. Ours is a Republican form of Government, wherein the people rule through their elected representatives. Discussion pro and con of public questions is not only healthy in such a form of Government but it is absolutely necessary if the people are to intelligently act. The people in the United States are not required to vote *Ja.*

Petitioner happened to take what became the losing side of the great issue, as he had taken before in the first World War. Is he for that matter to be severely punished by confinement in a penitentiary from two to six years, be required to pay a heavy fine, and the costs of his trial while those on the winning side of the argument are honored? If so, this Democracy has never so functioned in more than 150 years of its history!

The petitioner is in sharp disagreement with the statement in the opinion below that there "was much more evidence from which it could be inferred that defendant was carrying on his clandestine activities in behalf of his foreign principals" (R-334). The opinion does not indicate any such evidence in the record a basis for such statement.

The activities were not "clandestine" in any respect whatever, unless they were made so by the failure of petitioner to report them in response to paragraph 11 of his supplemental registration statements as a part of the nature of his business. And he was legally required to do so.

The petitioner publicly went to Senator Lundeen's office, during regular working hours, when all could see who were interested therein. In the same manner he went to Congressman Fish's office and to the office of the War Debts Committee and to all other places. Certainly it has not been proven that he went to these places in a clandestine manner in the dead of night. There was not even an attempt to prove such a course of conduct in a single instance on the part of petitioner. Nor is there any evidence, as repeatedly stated, that any of these activities were carried on for any foreign principals. As the court below stated in its opinion, the prosecution did not present the case to the jury on the theory that in performing these activities the petitioner was acting as the agent of any foreign principal. "The case was presented to the jury on the basis of

a failure to disclose all of registrant's business" (R-334). Petitioner insists that he was not requested to disclose all of his business, but only to furnish a comprehensive statement of the nature of his business and that these activities did not constitute his business—any more than the activities constituted the business of those who were on the other side of the controversy as to whether the United States should join in the war!

The misconduct of prosecutor Maloney in the trial is shown by the record (R-122-133-134, 138, 150-151, 155-159, 161-162, 142, 146). The court below stated as to him: "We believe that many of the statements were improper"; "to be unnecessary stage play on the part of the prosecutor" (R-341) and that "some of the conduct of the prosecutor involved was not exemplary, particularly in view of his office" (R-340). The court, however, stated that part of this was due to the behavior of defense counsel and that as to the closing remarks of the prosecutor to the jury, the petitioner's counsel did not object at the time they were made and until after the noon recess (R-341).

During the course of the evidence for the defense, the Chief Defense Counsel, Mr. Morosini, who had conducted by far the larger part of the defense, became exasperated and there occurred the colloquy in the presence of the jury which is quoted by the court below on pages 20 and 21 of its opinion (R-339-340). This Chief Defense Counsel rested his case. This happened immediately before the noon recess and when the court reconvened, it called Mr. Morosini to the bench and directed him to no longer participate in the case. It was after this that there was failure of the other trial attorney to object to the highly inflammatory closing argument of the chief prosecutor until after the court had commenced his instructions to the jury, which the

trial court held to be too late and which holding the court below refused to disturb.

By way of summary of this statement, it is believed that the record fairly shows that petitioner was employed from July 20, 1939, to September 8, 1941, by the Munich newspaper and from September 27, 1939, to July 2, 1941, by the German Library of Information in his capacity as an author and journalist; that these facts were fully and completely shown to the State Department in his original registration statement, in the three supplemental registration statements, and in his subsequent letters giving notifications of the termination of such contracts; that there is no evidence whatever that he performed for these two foreign principals any duties, activities, or business except as editor and journalist as covered by these documents filed with the State Department.

Also, it is believed that something sinister was thought in the courts below to have been attached to petitioner's voluntary, unpaid, and personal activities in trying to keep the United States neutral in accordance with the Neutrality Act of November 4, 1939; that apparently this thought is due to the fact that over the period of his employment by these foreign principals he received under his contracts of employment and for the services set forth therein and for some extra editorial work what may seem to some as a large aggregate sum of money, namely "something like $65,000" (R-332), but against which he had to charge certain clerical and other office expenses, the exact amount not being shown in the record; that in the trial, which took place after the United States entered the war, sinisterism was deliberately fostered and encouraged by the prosecuting attorney's use of petitioner's book on propaganda in the first World war; and that petitioner's conviction and sentence as well as its affirmance have been based on some in-

ferences that his efforts on his own behalf to keep the United States out of the war and to continue it neutral were because of the fact that he was employed by the two foreign principals and for the benefit of the German Reich and its allies—and this without there being any evidence from which it could be reasonably concluded that these activities were other than on behalf of petitioner and without any profit therefrom.

If the Act of 1938 as amended in 1939 and the supplemental registration forms or either of them had required that the petitioner report his activities, whether or not on behalf of his foreign principals, he could have so reported.

Specification of Error to be Urged.

The Court below erred in failing to hold:

(1) That the District Court of the United States for the District of Columbia erred in not sustaining the demurrer to the entire indictment of five counts instead of Counts I and IV thereof, only, because:

(a) The indictment shows on its face, in the first paragraph thereof, that it was brought in by a Grand Jury in the October 1941 Term of the said court and which Grand Jury had been impaneled, sworn and charged during the July 1941 Term of said court and by order of that court authorized to sit at the October 1941 Term contrary to the Act of March 3, 1901, c. 854, Sec. 203, 31 Stat., 1222 (Tit. 11, Sec. 1403, D. C. Code, 1941 ed.), and which indictment is consequently a nullity.[1]

(b) The indictment shows on its face that the alleged crime of omitting to state in answer to Paragraphs

[1] This error was not urged in the courts below, though the point appears to be jurisdictional, because it did not then come to the attention of counsel for the petitioners that specific statutes governed the term of Grand Juries in the District of Columbia criminal courts and that the general statute applicable to the terms of Grand Juries in the district courts outside of the District of Columbia are not applicable to the terms of Grand Juries in the District of Columbia.

11 of the registration forms prescribed by the Secretary of State "as a part of his business and activities" the activities charged in Counts II, III and V of the indictment is not a failure to state a material fact or facts required by Section 3 of the Act of June 8, 1938 c. 327, (52 Stat., 631) as amended by Section 2 of the Act of August 7, 1939, c. 521, (53 Stat., 1244) (22 U. S. C. 611-616), or by said Paragraph 11 of the supplemental registration forms or by the regulations issued by the Secretary of State to be stated in answer to said paragraph.

(c) The Paragraph 11 of the supplemental registration forms prescribed by the Secretary of State, requiring a "Comprehensive statement of nature of business of registrant," was not in accordance with the aforesaid Section 3 of the Act of June 8, 1938, as amended by Section 2 of the Act of August 7, 1939.

(d) The petitioner having answered Paragraph 11 of the supplemental registration statements with the words "Author and Journalist," fully complied therewith.

(e) The Secretary of State having been authorized to fix in supplemental registration statement forms prescribed by him the details required under the statute of registrant's activities "as agent of a foreign principal" during the preceding six months' period did not fix any details of such activities in Paragraph 11 of the supplemental registration form, but instead used the language which he did therein and petitioner complied therewith.

(f) Section 5 of the Act of June 8, 1938, (22 U. S. C. 615) is indefinite, uncertain, and fixes no definite standard of conduct, the violation of which constitutes a crime, thereby infringing the petitioner's rights under the Fifth and Sixth Articles in the Bill of Rights to the Constitution of the United States.

(2) That the District Court of the United States for the District of Columbia erred in not granting the motions to dismiss the balance of the indictment (Counts II, III and V) which were submitted at the commencement of the trial and renewed at the conclusion of all evidence in the case for the reasons it erred in not sustaining the demurrer to the whole of the indictment.

(3) That the aforesaid District Court of the United States for the District of Columbia erred:

(a) In admitting in evidence, over objections of petitioner, the book, "Spreading Germs of Hate" and in permitting the use thereafter made of it before the jury by the prosecuting attorney also over objections of the petitioner.

(b) In granting as instructions to the jury the prosecution's prayers Nos. 2A, 2 and 8 and in not granting petitioner's prayer No. 19, the latter sharply raising the issue that petitioner could not be convicted under the indictment unless the jury found that the activities, or some of them, charged in Counts II, III and V of the indictment were ones in which he engaged "as agent of a foreign principal during" the preceding six months' period and that such omitted facts were material ones required to be reported by Section 2 of the Act of June 8, 1938, and the supplemental registration forms.

(c) In referring to, and quoting from a House of Representative Committee report in his general charge to the jury with respect to the requirements placed by law on registrants of foreign principals in filing supplemental registration statements.

(d) In permitting in the presence of the jury the misconduct of the prosecuting attorney and in not instructing the jury to disregard such misconduct, particularly the inflammatory closing argument of such attorney for the Government.

(4) The court below further erred in not holding that the trial court erred in adding in his sentence of petitioner to the penalties imposed by Section 5 of the unamended Act of June 8, 1938 a further penalty of the costs of the trial not imposed by said section.

Reasons for Granting the Writ.

1. The issues involved in the registration of agents of foreign principals, including their filing of supplemental

registration statements are of great public importance which have not been, but which should be settled by this Court.

2. While the Act for the Registration of Agents for Foreign Principals approved June 8, 1938, as amended by the Act of August 7, 1939 (22 U. S. C. 611-616), under which petitioner was indicted, convicted and sentenced, has been superseded by the New Act approved April 29, 1942, Public No. 532, the construction placed by the court below on the said Acts of 1938 as amended by the Act of 1939, affects the construction of the New Act of 1942, which Act petitioner claims meets the constitutional and other defects in the prior Acts of 1938 and 1939, and the supplemental registration forms and regulations issued thereunder by the Secretary of State.

3. The construction placed by the courts below on Section 3 of the Act of June 8, 1938 as amended by Section 2 of the Act of August 7, 1939, on the new Act of 1942, Paragraph 11 of the supplemental registration forms and on the regulations issued by the Secretary of State is probably untenable and involves a question of substance relating to the application of a statute of the United States which has not been, but which should be settled by this court.

4. The holding by the court below that the Act of June 8, 1938, as amended by the Act of August 7, 1939, that fails to state what shall constitute a material fact which, if omitted from Paragraph 11 of the supplemental registration form, shall constitute a crime punishable severely by fine and imprisonment is indefinite, uncertain, and fixes no standard of conduct, the violation of which shall constitute a crime, is in conflict with applicable decisions of this court. *United States v. Cohen Grocery Company*, 255 U. S. 81.

Lanzetta v. New Jersey, 306 U. S. 451.
Gorin v. United States, 312 U. S. 19.
United States v. Wurzback, 280 U. S. 396.
United States v. Capital Traction Company, 34 App. D. C. 592.
Czarra v. Board of Medical Examiners, 25 App. D. C. 443.

5. The holding of the court below that "The spirit of the Act required defendant to detail his disclosure more than he did" (R-331) and that "Merely giving the most generic terms possible in describing the nature of registrant's business is not, we believe, a compliance with the spirit of the Act" (R-329) and not relying upon the letter of this criminal statute for its conclusion that petitioner was required to report all of his activities, whether or not they were on his own behalf—when coupled with the judicial rewriting in the opinion of subsection 3(c) of the Act (p. 5 opinion), upon which the court correctly states "this indictment is based"—is in conflict with the fundamental bases of construction of criminal statutes and in conflict with decisions of this court.

An alleged crime may be within the letter of a statute but not within the spirit thereof and in that event the alleged offender is permitted to go free. See *Church of the Holy Trinity v. United States*, 143 U. S. 226, 232, and cases there cited.

The converse thereof is not true that an alleged crime may be within the spirit of a statute but not within the letter thereof and the alleged offender convicted and subjected to heavy penalties.

This was the English doctrine of constructive crimes and the entrapment of innocent persons by vague penal laws through the medium of judicial interpretation to which Edward Livingston referred (Vol. 1, pp. 12, 170, Chase's edition, 1873, Works of Edward Livingston on Criminal Jurisprudence) as follows:

"This dreadful list (of offenses) was increased by the legislation of the judges, who declared acts which

were not criminal under the letter of the law, to be punished by virtue of its spirit. The statute gave the text, and the tribunal wrote the commentary in letters of blood; and extended its penalties by the creation of constructive offenses. * * * What the law forbids, is an offense; but the law cannot forbid without being perfectly intelligible. * * * An ambiguous penal law is no law, and judicial decision cannot explain it without usurping authority which does not belong to them."

"Where the charge is of crime it must have clear legislative basis"—*United States v. George*, 228 U. S. 14,22.

"Our concern is not with the power of Congress but with the proper interpretation of action taken by it. This must be ascertained in view of the settled rule that 'there can be no constructive offenses, and before a man can be punished his case plainly and unmistakably within the statute' *(United States v. Lacher*, 134 U. S. 624, 628)."—*United States v. Bathgate* and others, 220 U. S. 220, 225.

"The words of the Act suggests no intention to include the obtaining of money by threats. There are no constructive offenses; and before one can be punished, it must be shown his case is plainly within the statute. *United States v. Lacher*, 134 U. S. 624, 628."—*Fasulo v. United States*, 272 U. S. 620, 629.

"We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them which is ambiguous and equally susceptible of conflicting constructions. But this court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its context, even though they may involve the same mischief which the statute was designed to suppress."—*United States v. Chase*, 135 U. S. 255.

6. The court below concedes that "some of the conduct of the prosecutor was not exemplary, particularly in view

of his office"; "that many of the statements were improper" which he made; "Most of the worst examples of inflammatory remarks, however, came in the closing argument, to which no objection was made until far too late"; that a certain named incident "appears to us unnecessary stage business on the part of the prosecutor"; but concludes that a "careful study of the record shows that although some of the remarks of the prosecutor were improper, on the whole it cannot be said that there was prejudicial error." The court also stated that part of this misconduct "in turn was due to the behavior of defense counsel" (R. 340-341). The record is sufficient reply to the latter statement (R. 155-159, 161-162, 133-138). In concluding that such misconduct did not constitute prejudicial error the court failed to give effect to decisions of this Court.

Berger v. United States, 295 U. S. 78, 84.

Hall v. United States, 150 U. S. 76, 92.

This same prosecuting attorney's conduct was condemned in *United States v. Buckner*, 108 Fed. (2nd) 921 and *United States v. Dubrin*, 93 Fed. (2nd) 499, though the judgments were not reversed because thereof.

7. The court below in failing to hold that reversible error was committed by the ruling of the trial court excluding the chief defense counsel from the case at the crucial point of preparing and submitting prayers for instruction to the jury, excepting to prosecution prayers which the court granted, and in making summation of the petitioner's case to the jury failed to give effect to decisions of this Court that a defendant is entitled in a criminal case to counsel of his own choice and that he cannot be constitutionally deprived of such counsel of his own choice.

Glasser v. United States, 86 U. S. Law ed. 405, No. 32, Adv. Ops. Oct. Term 1941.

Johnson v. Zerbst, 304 U. S. 485.

See also Tit. 11, Sec. 1302, D. C. Code, 1941 ed., for proper disciplinary procedure of attorneys in the District of Columbia Courts.

8. The question whether a defendant convicted of a crime, not involving a fine or forfeiture under the fiscal laws of the United States, may be sentenced to imprisonment and fine and to payment of the costs of the trial under a statute which provides for penalties of imprisonment and/or fine, only, appears not to have been, but should be settled by this Court.

Re Swan, 150 U. S. 637 left the question undecided.

Oates v. United States, 233 Fed. 201, 207, was a sentence in contempt proceedings of imprisonment and costs of the trial under Section 268 Judicial Code (28 U. S. C. 385) which authorized fine or imprisonment as punishment. Other questions were involved and this Court denied certiorari in 242 U. S. 633.

Whitworth v. United States, 114 Fed. 302, was a sentence of imprisonment and fine and costs of the trial for embezzling funds of the United States. Section 4046, Revised Statutes (Tit. 18 U. S. C. 355) authorized punishment of imprisonment or fine equal to the amount of money embezzled or both. The court reversed the sentence (pp. 304-305) because imposition of the additional penalty of costs of the trial was not authorized. Some time later, the court appended what appears to be an *ex parte* statement at the foot of the opinion to the effect that its attention had not been invited to Section 974, Revised Statutes (Tit. 28, Sec. 822 U. S. C.) originating in Section 5 of the Act of May 8, 1792. 1 Stat. 277, and that said court was wrong in its opinion.

Respectfully submitted,

O. R. McGUIRE,
Attorney for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

The Facts.

Petitioner relies upon the facts as summarized in the petition herein and due to the necessary length of the petition so as to include what are believed to be the basic facts to properly inform the court, additional facts will not be restated in this brief except to the extent absolutely necessary to the argument on the law.

ARGUMENT.

I.

THE INDICTMENT UNDER WHICH PETITIONER WAS TRIED IS A NULLITY, VOID AND OF NO EFFECT AS SHOWN ON THE FACE THEREOF. THE ENTIRE PROCEEDINGS THEREUNDER WERE IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE FIFTH ARTICLE IN THE BILL OF RIGHTS TO THE CONSTITUTION.

The attempt by the District Court of the United States for the District of Columbia to extend the term of the Grand Jury impaneled, sworn and charged at the July, 1941, Term of that court to the October, 1941 Term was in direct conflict with the Act of March 3, 1901, c. 854, (31 Stat. 1222) as amended by the Act of April 19, 1920, c. 153, (41 Stat. 559), (Tit. 11, Sec. 1406 D. C. Code, 1941 ed.) which, as contained in the District of Columbia Code of Laws, is as follows:

> "*The term of service of the grand jury in the criminal court shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court.* The foreman of the grand jury shall be selected by the justice presiding over the special term known as criminal division number one from among the jurors, grand and petit, in attendance upon the District Court of the United States for the District of Columbia; and, in the event that said foreman is not

selected from among the twenty-three grand jurors in attendance, but is selected from among the petit jurors, one of the said grand jurors shall be excused as such and transferred to the roll of petit jurors, and the term of service of the foreman so selected of the grand jury shall be concurrent with the term of service of the grand jury." (Italics supplied.)

Rule 2 of the Rules of the District Court of the United States for the District of Columbia (adopted June 26, 1941) provides that:

"TERMS. Terms of the general term and of each division of the court shall begin on the first Tuesday of January, April, July and October, except it be a legal holiday, when the term shall begin the following business day."

The Act of May 19, 1922, c. 194 (42 Stat., 543) (as carried into Tit. 11, Sec. 1408, D. C. Code, 1941 ed.) after *providing procedure for ordering an additional grand* jury in the United States District Court for the District of Columbia further provides as to such grand jury that:

"* * * unless sooner discharged by order of said chief justice, or, in his absence, senior associate justice, said additional grand jury shall serve during and until the end of the term in and for which it shall have been drawn."

It thus seems clear from the terms of the Federal statutes exclusively applicable to the District Court of the United States for the District of Columbia that the term of any grand jury and of any additional grand jury impaneled, sworn and charged at the July 1941 Term of that Court automatically and unqualifiedly ended and ceased to exist at the end of that term and that such term of the grand jury could not be extended so that it could legally sit in the October 1941 Term of that court. This conclusion is reinforced by another provision of the District of Columbia Code (Tit. 23, Sec. 104, 1941 ed.) which provided that if any person charged with a criminal offense shall have been

committed or held to bail to await the action of a grand jury, and within nine months thereafter the grand jury shall not have taken action on the case, the United States District Court for the District of Columbia, holding a special term as a criminal court (established by Tit. 11, Sec. 311, D. C. Code, 1941 ed.):

> "* * * may from time to time enlarge the time for taking action in such case by the grand jury."

While the trial court below could, as thus provided, "enlarge the time" for a grand jury to take action, it could do so only where the party accused was on bail or committed and could not extend a grand jury from one term to another.

The indictment against petitioner was filed October 8, 1941 (R-319). He was not placed on bail until October 10, 1941 (R-319). He had not been committed or arrested before indictment. Consequently he had to be indicted by the grand jury impaneled, sworn and charged at the July 1941 Term or by another grand jury at its October 1941 Term, selected in accordance with law (Tit. 11, Sec. 1407, D. C. Code, 1941 ed.). Therefore the indictment by a so-called grand jury in the October 1941 Term of the court which had been ordered by the court below, in the teeth of the above referred to District of Columbia statutes, to sit in that term was no indictment at all; such so-called indictment was a complete nullity and the trial of petitioner thereunder was in violation of his rights under the Fifth and Sixth Articles in the Bill of Rights to the Constitution of the United States. The grand jury being not for the term of court at which the indictment was found, and contrary to the statutes was neither a *de jure* nor a *de facto* grand jury. The indictment is *coram non judice*. *United States v. Gale*, 109 U. S. 65.

This indictment of petitioner recites on its face that it was brought in by a jury duly impaneled, charged and sworn at the July 1941 Term of the trial court and that by

order of said court "pursuant to the provisions of Section 284 of the Judicial Code as amended (28 U. S. C. 421) authorized to continue to sit at the October 1941 Criminal term of said court" (R-1). But the trial court had no authority whatever under the cited Section 284 of the Judicial Code which is not in terms applicable to the courts of the District of Columbia.

This Section 284 of the Judicial Code of 1911, came from Section 810, Revised Statutes, which, in turn, originated with the Act of September 24, 1789, c. 20, (1 Stat. 88), as amended. Thus the origin of the District of Columbia Code provisions, as to the term of a grand jury, as above quoted, is entirely separate and distinct from the origin of Section 284 of the Judicial Code, applicable to district courts of the United States outside of the District of Columbia. The correct interpretation in this respect is settled by Tit. 49 Sec. 301, D. C. Code, 1941 ed. The provisions of the District of Columbia Code specifically applicable to the said District of Columbia control rather than the terms of the Judicial Code of 1911, generally applicable to the district courts of the United States.

United States v. Burroughs, 289 U. S. 159
Johnson v. United States, 225 U. S. 405
Winston v. United States, 172 U. S. 303
Clark v. United States, 19 App. D. C. 295
O'Brien v. United States, 69 App. D. C., 99 Fed. (2nd), 368, certiorari denied, 305 U. S. 562.
Kleindienst v. United States, 48 App. D. C. 190
Behrle v. United States, 69 Apps. D. C. 304, 100 Fed. (2nd) 714.
Act of June 25, 1936, c. 804, 49 Stat. 1921.

The demurrer (R-53-56) searched the entire indictment. While it appeared on the face of the indictment that it had been brought in by a grand jury in the October 1941 Term, which had been impaneled to sit in its July 1941 Term, and

that such order had been issued under Section 284 Judicial Code, it did not come to the attention of trial counsel that specific provisions of the District of Columbia Code limited the grand jury term to the term of the criminal court in which the grand jury had been impaneled. Also this fact did not come to the attention of present counsel when the case was presented to the court below.

However, the nullity of the indictment may be raised at any time. This Court, unanimously speaking through Mr. Justice Bradley in *United States v. Gale*, 109 U. S. 65, stated that while certain objections should be taken in regular order and due course of proceedings:

> "There are cases undoubtedly, which admit of a different conclusion, and in which the objection to the grand jury may be taken at any time. These are cases where the whole proceedings of forming the panel is void; as where the jury is not a jury of the court or term in which the indictment is found * * * or where some other fundamental has not been complied with."

Also, it was stated further along in this opinion that:

> "In Hardin's case, 2 Rich. 533, the motion in arrest of judgment was based on the ground that the grand jury was not such at the term at which the bill was found and, of course, the proceedings were *coram non judice*. We think that the doctrine of waiver applies as well to cases of the objections to the qualifications of jurors, and to the mode of impaneling the jury; but does not apply to cases where the proceeding is wholly void by reason of some fundamental defect or vice therein."

There were undoubtedly good and sufficient reasons why the Congress made a distinction in the law as between the District of Columbia criminal courts, sitting in the political Capitol of the Nation, and the United States District Courts outside of said District of Columbia with respect to the possible period during which grand juries in the respective jurisdictions should be permitted to sit. But whatever may have been the reasons for the distinction, it has been made

in the statutes and we submit that this indictment is wholly void and that the trial, conviction and sentence of petitioner thereunder was in violation of his rights under the Fifth Article in the Bill of Rights to the Constitution of the United States.

II.

SECTION 5 OF THE ACT OF JUNE 8, 1938 (TIT. 22, SEC. 615 U. S. CODE) IS INDEFINITE, UNCERTAIN, AND FIXES NO DEFINITE STANDARD OF CONDUCT, THE VIOLATION OF WHICH CONSTITUTES A CRIME, THEREBY INFRINGING PETITIONER'S RIGHTS UNDER THE FIFTH AND SIXTH ARTICLES IN THE BILL OF RIGHTS TO THE CONSTITUTION OF THE UNITED STATES.

This Section 5 of the 1938 Act is the penal section. It provides that:

> "Any person who wilfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or *wilfully omits to state any material fact required to be stated therein* shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both." (Italics supplied.)

The italicized words in this section, "wilfully omits to state any material fact required to be stated therein", are the only ones applicable in this case. The petitioner filed all original registration statements and all supplemental registration statements required of him. It is not charged in the indictment that he made any false statements in any of the three supplemental registration statements. The indictment is limited to the charges in the remaining three counts that he wilfully omitted to state material facts which were required to be stated in the three supplemental registration statements.

What are "material facts", the omission of which shall constitute the crime for which severe punishment is prescribed, is nowhere defined in said section. Likewise such definition of "material facts" or what omission shall constitute a "material fact" is not contained in any other section of the Act of June 8, 1938 as amended by the Act of August 7, 1939. Such failure of these statutes was corrected in the New Act of April 29, 1942, Public No. 532 (hereafter referred to as New Act). Section 2(a) of this New Act states in detail what shall be included in original and supplemental registration statements:

"• • • which shall be regarded as material for the purposes of this Act."

The counts of the indictment under which petitioner was convicted, being limited to the three supplemental registration statements, reference must necessarily be made to that part of the 1938 Act as amended by the 1939 Act to see what is required therein to be stated in a supplemental registration statement. Section 2 of the Act of 1939 amending Section 3 of the 1938 Act provides:

"Sec. 2. That section 3 of the Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes' approved June 8, 1938 (public numbered 583, Seventy-fifth Congress, third session), is hereby amended to read as follows:

"Sec. 3. Every person who has filed a registration statement required by section 2 shall, within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement under oath, on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—

"'(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period.

"'(b) The amount and form of compensation received by such person for acting as agent for a foreign

principal which has been received during such six months' period as agent of a foreign principal either directly or indirectly from any foreign principal, and

"'(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

There is thus no definition, or even indication in this section of the Act as to what are "material facts," the wilful omission of which in the supplemental registration statements shall constitute a crime.

The Secretary of State was required by this section to prescribe the form for the supplemental registration statements. The Secretary was also required in Section 2 of the unamended Act of 1938 to prescribe the form to be used for original registration statements. He did prescribe both forms. The petitioner used said appropriate forms in filing his original and his supplemental registrations.

These two classes of forms were identical, except for Paragraphs 15, not in question here (R-22, 28, 32, 46). The change in this paragraph as between the two classes of forms is no doubt due to the specific requirements of the amended subsection 3(b) above quoted.

The indictment charges in counts II, III and V that petitioner omitted to state certain activities "a part of his business and activities" in answer to paragraphs 11 of the registration forms which are identical in their requirement that there be given:

"Comprehensive statement of nature of business of registrant."

There were 19 of these identical paragraphs or requirements in all of the registration forms except as to paragraph 15, as above noted, and these paragraphs are correctly summarized by the court below in its opinion, commencing at foot of page 3 and ending at top of page 4 thereof (R-322-323). None of the paragraphs of the form except No. 11 is involved in the indictment.

The supplemental registration form contained a printed notice at the top thereof that where the answer to any paragraph therein, except No. 1, would be the same as the answer given to the corresponding paragraph in a statement previously filed, the word "same" could be used in answering such paragraph in the supplemental form (R-27, 30, 44).

The constitutional deficiency of indefiniteness and uncertainty and the failure to fix a standard of conduct, the violation of which should constitute a crime is in Section 5 of the Act. There is no indefiniteness and uncertainty in subsection 3(c) but it fixes no standard. In fact, it fixes nothing. It gives permissive, but not mandatory authority to the Secretary of State to fix the details required under the Act of the activities of a registrant "as agent of a foreign principal" during the preceding six months' period. The Act requires an agent of a foreign principal to report certain details. The Secretary may fix the "activities of such person as agent of a foreign principal" of the "detail required under this Act", which he deems necessary to have explained and make of record.

This subsection 3(c) may not be rewritten, which the court below did do, as is shown by the following comparison:

Subsection 3(c)	Court's Rewrite
"A statement concerning such detail required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal for such six months' period".	"We interpret the provision as follows: a statement of the activities of such person (an agent of a foreign principal) during such six months' period." (R-324).

A criminal statute must be applied as it is found. It cannot be rewritten under the guise of "interpretation" as the court below has done. *United States v. George*, 228 U. S. 14, 22; *Bathgate and others v. United States*, 220 U. S. 220, 225; *Falsulo v. Umited States*, 272 U. S. 620; *United States*

v. Chase, 135 U. S. 255. See also Edward Livingston's statement quoted in the petition (P. 32).

If the subsection 3(c) has to be judicially rewritten to uphold the conviction and sentence of petitioner, such subsection would then be indefinite and uncertain along with the penal section 5 of the Act and the petitioner could not be constitutionally convicted under the said subsection 3(c) nor sentence imposed upon him under section 5 of the Act. *United States v. Cohen Grocery Company,* 255 U. S. 81, affirming 264 Fed. 218; *Lanzetta v. New Jersey,* 306 U. S. 451; *Gorin v. United States,* 312 U. S. 19, 28; *United States v. Wurzbach,* 280 U. S. 396; *United States v. Capital Traction Company,* 34 App. D. C. 592; *Czarra v. Board of Medical Examiners,* 25 App. D. C. 443; *Louisville & Nashville R.R. Co., v. Commonwealth,* 99 Ky. 132; *Oregon v. Mann,* 2 Oregon 236; *Louisiana v. Gasler,* 44 La. Ann. Rep. 636.

The phrase "agent of a foreign principal" in subsection 3(c), which the court below found in its way, is found twice in the preceding subsection 3(b), wherein Congress itself fixed the requirement. There, in each instance, it is plainly apparent that the phrase is used in connection with the compensation received by a registrant for acting as the agent of a foreign principal and received directly or indirectly by the registrant from any foreign principal for acting as agent of a foreign principal. That is, subsection 3(b) is not interested in the compensation received by the agent in any capacity except in his capacity as an agent of a foreign principal nor in any compensation received by him from sources other than direct or indirect from foreign principals.

We submit that the same phrase in subsection 3(c) is used in identically the same manner; that is, that the Secretary may fix in supplemental registration forms, prescribed by him, such details as the agent is required to report under

the Act "of the activities of such person as agent of a foreign principal" during the preceding six months' period for which the supplemental registration statement is filed, and which the Secretary may want. The Secretary was not authorized by subsection 3(c) or elsewhere in the Act to fix for reporting in a supplemental registration all activities of a registrant. He could only fix for reporting in the supplemental registration the activities of such person "as agent of a foreign principal."

The Secretary in Paragraph II fixed no activities for reporting by a registrant "as agent of a foreign principal." Most certainly in asking for a "comprehensive statement of nature of business of registrant," as he did do in Paragraph 11 of the supplemental form, he did not fix for reporting by such agent any or all activities of the agent on his own behalf. There is not a word in subsection 3(c) of the Act which authorized the Secretary to ask for "nature of business of registrant." Yet the court below (R-326) stated that: "Item 11 in itself is an exercise of the Secretary's power requiring registrant to reveal his own political activities."

Support of any such conclusion would require "business", as used in Paragraph 11 of the form to be synonymous with "activities", as used in subsection 3(c) of the statute; that is, that all "business" must be "activities" and all "activities" must be "business" which is simply not true. Also "comprehensive" and "nature" as used in the said Paragraph 11, would have to be synonymous with "details required under this Act," as used in the subsection.

In an effort to make subsection 3(c) of the Act and Paragraph 11 of the supplemental registration form require that the registrant must report all of his activities whether or not performed as agent for his foreign principals, the court

below also relied in its opinion upon paragraph 12 of Chapter IV of the regulations issued by the Secretary of State, which provides:

> "Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the Act and regulations shall be considered subject to the requirement of registration." (*Infra*, p. 92.)

This regulation does not require, or even advise an agent of a foreign principal that as such agent he must report any or all of his activities, whether or not performed "as agent for a foreign principal," using the language of subsection 3(c) of the Act. The regulation simply and clearly provides that if a person is such an agent, and performing such activities for a foreign principal as are not excepted under the proviso to section I of the Act and the regulations, that agent must register. The petitioner did register. What he must state in answer to Paragraph 11 of the Supplemental form; what "material facts" he must report in answer to that paragraph 11, are simply not stated in this paragraph of the regulation, nor elsewhere in either the regulations or Section 3(c) of the Act.

The whole of the English language was available to Congress in writing the 1938 Act and its 1939 amendment. Words in the English language were available for Congress to write these statutes in such terms as to make them definite and certain, fix standards of conduct, the violation of which should constitute a crime and to require registrants in their supplemental registrations to report all of their activities, whether or not for a foreign principal if that was what was required. In fact Congress used the necessary words in Section 2 of the New Act of 1942 to itself fix such a requirement.

In fact, this New Act of 1942—in terms so clear as not to admit of resort to committee reports as an aid to their interpretation—has met the constitutional defects which petitioner insists exist in the 1938 Act as amended in 1939. What are "material facts" are stated in this New Act, that Act is apparently definite and certain, at least to the extent of expressly providing in Section 2 thereof that a registrant must report all of his activities, both for himself and for his foreign principal. A committee report accompanying such an unambiguous bill cannot be used to establish, or assist in establishing that in these respects the New Act is similar to the prior 1938 and 1939 Acts which it clearly is not.

Standard Fashion Company v. Magrane Houston Company, 258 U. S. 346.
McLean v. United States, 226 U. S. 374.
Binns v. United States, 194 U. S. 486.
Caminetti v. United States, 242 U. S. 470.

If the Secretary had thought that the 1938 Act as amended in 1939 authorized him in supplemental registration forms to fix a requirement that a registrant report all of his activities, whether or not "as agent for a foreign principal," there was likewise available to him the whole of the English language with which to do it. Instead of doing it, he simply wrote Paragraph 11 of the supplemental registration form for a comprehensive statement of the nature of business of registrants.

If any such authority had existed in the Secretary, under the 1938 Act as amended, to require and fix for reporting a complete statement of the activities of registrant regardless of whether they were engaged in as agent for a foreign principal, simple fairness towards the citizens of the United States would have required him to have stated such an administrative requirement in the supplemental registration forms which all registrants had to use. This

he unquestionably did not do and it is difficult to conclude, in view of the terms of Section 3 of the Act as amended, that the distinguished present Secretary of State ever thought he had any such authority thereunder. At least if such authority had existed, the administrative requirements to report in supplemental registration all activities, whether or not as agent of a foreign principal, should have been stated in the regulations in unequivocal language for the information and guidance of registrants. This likewise was not done. Such agents were simply advised, in substance, that if they or their activities as agents were not excepted, in the law, they must register.

It is respectfully submitted that subsection 3(c) of the Act and all of the remainder of said Act as amended, together with the Secretary's Paragraph 11 of the supplemental registration form and Paragraph 12, Chap. IV of his regulations do not make definite and certain the "material facts" required by the Act to be reported and which Section 5 of said Act provides may not be omitted from a supplemental registration on forms prescribed by the Secretary under pain of a penitentiary sentence and heavy fine. Also, that all of these two 1938 and 1939 statutes, regulations and forms, when taken together, do not justly and fairly advise a registrant that in answer to Paragraph 11 of his supplemental registration form he must state all of his activities, even though they may be entirely for himself which has not been proven to be otherwise in this case.

At the very least the requirement derived from the amended Section 3 of the Act, the forms and the regulations as to what a registrant should report in answer to Paragraph 11 of the supplemental registration form is ambiguous, indefinite and uncertain. Even the court below took nearly twenty-four closely printed pages to reach its conclusion; in doing so it undertook to rewrite sub-

section 3(c) of the amended Act, and placed a construction on Paragraph 11 of the supplemental registration form and Paragraph 12 of Chap. IV of the regulations which is unwarranted by the terms thereof.

This Court pointed out in *United States v. Wiltberger*, 5 Wheat. 76, 95 that:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment."

Also in *Harrison v. Vose*, 9 How. 372, 378, that:

> "In the construction of a penal statute, it is settled, also, that all reasonable doubts concerning its meaning ought to operate in favor of the respondent."

See also *Northern Securities Company v. United States*, 193 U. S. 197, 358 and *Bolles v. Outing Co.*, 175 U. S. 262.

Arguments of counsel seeking in times of war to invoke the regularity of grand jury proceedings established in times of peace and the terms of the Constitution of the United States to protect the rights of an American citizen will not be viewed by this Court, the signer of this brief is sure, as "technical" or "hypertechnical". Especially is this responsibility heavy on defense counsel when there is considered the atmosphere created in the trial court by the prosecuting attorney.

III.

THE ANSWERS MADE BY PETITIONER TO PARAGRAPH II OF THE THREE SUPPLEMENTAL REGISTRATION STATEMENTS WERE SUFFICIENT COMPLIANCE THEREWITH AND THE COURT BELOW ERRED IN NOT SO HOLDING. IT ALSO ERRED IN NOT HOLDING THAT THE MISCONDUCT OF THE PROSECUTING ATTORNEY WAS PREJUDICIAL AND THAT THE TRIAL COURT ERRONEOUSLY INSTRUCTED THE JURY THAT IT SHOULD CONVICT PETITIONER IF IT FOUND HE PERFORMED ANY OF THE ACTIVITIES NAMED IN THE THREE COUNTS OF THE INDICTMENT WITHOUT FINDING THAT HE PERFORMED SUCH ACTIVITIES FOR ONE OR BOTH OF HIS FOREIGN PRINCIPALS OR FOR ANY FOREIGN PRINCIPAL.

By reference, and in an effort to compress this brief, there is made a part of the argument in support of this point the statement of facts contained in the petition with respect to the terms of Paragraph 11 of the three supplemental registration forms and petitioner's argument with respect thereto. Also, the argument on the law in support of the preceding point II of this brief as to the terms of Section 3 of the 1938 Act is amended by Section 2 of the Act of 1939 with respect to the specific requirement stated in subsections 3(a) and 3(b) and the permissive, but not mandatory duty conferred on the Secretary of State in subsection 3(c) of the Act to "fix" in his supplemental forms such activities as he wanted reported concerning the activities of the "details" required in the Act to be reported by a registrant "as agent of a foreign principal."

The Secretary evidently did not want a report of any activities of a registrant "as agent for a foreign principal" because he asked for none in Paragraph 11 of his supplemental registrant form.

The requirement in said Paragraph for: "Comprehensive statement of nature of business of registrant" is not one concerning the registrant's activities for himself or

for his foreign principal, or both. We submit that it cannot be made such by any accepted rules of construction. It is a requirement concerning "nature of business". Even what is meant by "nature" and by "business" was not shown in the forms, statute, or regulations. The paragraph is a generic one and nowhere in the amended Section 3 authorizing and requiring the Secretary to prescribe forms for supplemental registrations or elsewhere in the Act is he authorized to require a report concerning the "nature of business of registrant."

The generic answer "Author and Journalist" stated the nature of petitioner's business—not only the nature of his business for more than a third of a century, during which he had earned his livelihood as a "prolific writer" of books and magazine articles, but the "nature of business" for which he was employed by his two foreign principals, as meticulously stated in the respective contracts of employment (R-24-26, 48-50). The work, or "business" of an editor and journalist was precisely the work he performed for his foreign principals.

With all of the resources of the Federal Bureau of Investigation, the Postoffice Inspection Service, and the Special Agency Service of the Bureau of Internal Revenue at his command—and this Court may take judicial notice of the ability, resourcefulness, and skill of these investigational services of the United States—no substantial evidence was produced at the trial that even one of the activities charged in Counts II, III and V of the indictment was performed by petitioner for either or both of his foreign principals or for any other foreign principal. It should be further added at this point that the prosecution had the aid of the British Censor's office in Bermuda, through which passed mail between petitioner and his Munich newspaper principal, as well as others in Europe,

and that no evidence was produced from that source that any of these activities were performed by petitioner for any foreign principal (R-206-210).

The most that was shown in this respect is that there was mailed an envelope addressed to a German official containing extracts from speeches of a certain Senator as published in the Congressional Record from time to time! This envelope, containing such public and harmless extracts, was mailed in New York in July 1941 while we were not only officially at peace with Germany and maintained diplomatic relations with her, but while the Neutrality Act of November 4, 1939 remained in effect. At that time any American citizen could have freely communicated with any person abroad without violating any law. If it be a fact that petitioner mailed this envelope and its contents, that not only does not establish that he was an agent of the official to whom he mailed it, but it shows that instead of conducting propaganda in the United States, he was in fact attempting to conduct propaganda in Germany —which attempt was neither within the letter nor the spirit of the amended 1938 Act.

There being no evidence whatever before the jury from which it might draw a reasonable inference that the petitioner,—in engaging in the activities charged in the three remaining counts of the indictment—which were reasonably designed to uphold the Neutrality Act of November 4, 1939, and keep the United States out of war—it may be reasonably inquired how it was that the jury convicted him.

The answer to this question is found in two things: (1) The prejudicial misconduct of the prosecuting attorney and (2) The instructions of the trial court that the jury should convict petitioner if it found he engaged in the activities charged in the indictment without the necessity of finding that he engaged in them for any foreign principal.

As to the misconduct of the prosecuting attorney, it is to be remembered that when the activities were performed and the indictment secured from a grand jury, which had no legal existence at the time, the Neutrality Act of November 4, 1939 was in effect. The trial was held commencing on February 16, 1942, or within approximately two months after the declaration of war between the United States and Germany, and continued until March 5, 1942, when the verdict of guilty was brought in by the jury (R-322-323).

Though an American citizen since 1901, the petitioner was of German birth, and until his contracts of employment were canceled, long before the indictment, he was admittedly an employee of two German principals.

During his opening statement to the jury, the prosecuting attorney held in his hand a copy of petitioner's book, *Spreading Germs of Hate*, which had been published in 1930 describing propaganda activities in the United States in 1914 to 1919 by the English, French and others and by Germany from 1914 to about the time the United States entered the war against Germany on April 6, 1917, during which time petitioner worked for the German Government as a propagandist. While holding this book in his hand and exhibiting it to the jury, this prosecuting attorney stated:

> "I hold here in my hand a book. This book will be the text of the Government and the obituary of this defendant.
>
> "Its title is 'Spreading Germs of Hate' by George Sylvester Viereck" (R-122).

In his closing argument to the jury this prosecutor said:

> "You have seen the book which, as I told you would be the text of the Government's case and the epitaph of this defendant" (R-134).

That the promise of the prosecutor the book would be used in the trial as the text of the Government was made

good all during the course of the trial and in the closing arguments of both prosecuting attorneys is amply demonstrated by the record of the trial (R-123-138, 159). After the jury had listened to this for days, the chief prosecuting attorney referred sarcastically in his closing argument to petitioner as "our little proponent of better relations", "the sinister character of this man's activities"; "The most amazing and undoubtedly the most contemptuous gesture and activity of this proponent of better relations"; that it was the purpose of the Germans "To divide us and literally beat our brains out." This prosecuting attorney then closed the case as follows:

> "In closing, let me remind you, ladies and gentlemen, that this is war. This is war, harsh, cruel, murderous war. There are those who, right at this very moment, are plotting your death and my death; plotting our death and the death of our families because we have committed no other crime than that we do not agree with their ideas of persecution and concentration camps. This is war. It is a fight to the death. The American people are relying upon you, ladies and gentlemen, for their protection of the men who man the guns in Bataan Peninsula, and everywhere else. They are relying upon you, ladies and gentlemen, for their protection. We are at war. You have a duty to perform here.
>
> "As a representative of your Government I am calling upon every one of you to do your duty" (R-159).

The jury convicted and the prosecutor thus made good his promise that the book would be the "obituary" and the "epitaph" of the petitioner.

The defense objected to the admission of this book in evidence (R-130, 128) and was allowed an exception (R-130). It objected to the reading of isolated extracts therefrom to the jury and this objection was overruled (R-128). The petitioner had tried to show his attachment to the United States but was not permitted to do so (R.-138-140).

The closing arguments came after petitioner's chief defense attorney had been removed from the case by the action of the court (R-115) and the other trial attorney did not make his objections to the inflammatory argument at the time it was made but instead made them after the court had commenced his instructions (R-160). Both the trial court and the court below held that the objections came too late. Further, the remaining trial counsel did not prepare and submit to the trial court prayers for instruction concerning the admission of the book and its use during the trial.

We submit that such omissions, held by both courts below to have been fatal, are in themselves sufficient to establish that the petitioner was seriously prejudiced by the trial Court's abrupt refusal to permit the chief defense attorney to conclude the defense in the case by preparing and submitting appropriate prayers for instructions and by making the defense argument to the jury.

Berger v. United States, 295 U. S. 78, 84.
Hall v. United States, 150 U. S. 76, 82.
Glasser v. United States, No. 32, Adv. Opins. Oct. Term, 1941, 86 U. S. Law. ed. 405.
Johnson v. Zerbst, 304 U. S. 458.

We further submit that by the use of this book and the unwarranted statements made by the prosecuting attorney to the jury, there was, or reasonably could have been, created belief in the minds of the jurors that the petitioner was a sinister individual, in league with the German War Lords and an enemy of the United States, his country. Also that the jury may well have hearkened to the demand of the prosecuting attorney that they convict the petitioner in order to support the men on Bataan peninsula, who were then trying to defend their positions against great odds, and in order to protect the people of the United States

from being divided and literally having their brains beat out!

All this was notwithstanding that petitioner had severed his agency relationships with his foreign principals long before the indictment, declaration of war and the trial and notwithstanding, we repeat, that no evidence submitted to the jury established or tended to establish that in the performance of his isolationist activities the petitioner was acting as the agent of any foreign principal.

But in view of the action of the trial court denying petitioner's prayer No. 19 (R-96-101) and the granting of the prosecution's prayers Nos. 2A, 2 and 8 (R-101-114) over the objections of the defense, conviction was insured. In substance, these three prosecution prayers compelled the jury to bring in a verdict of guilty on each of the three counts of the indictment. Petitioner did not deny that he had engaged in some of the activities charged in the indictment, as explained in the petition herein (Pp. 18-25) but it was enough under the trial court's instructions of the prosecution's prayers Nos. 2A and 8 for the jury to find that petitioner had engaged in such activities and had not reported them in response to the requirement of Paragraphs 11 of the three supplemental registration statements.

Such instructions of the trial court were consistent with the theory of the prosecution throughout that the petitioner was guilty because he engaged in the activities charged in the indictment but proved only as to the activities summarized by the court below in the paragraph of its opinion quoted in, and limited by the explanations in the petition herein (Pp. 18-25).

However, if the prosecution had been convinced that the failure to *report* the activities charged in the indictment constituted a violation of the 1938 Act as amended, it was

wholly unnecessary to prove more than that petitioner engaged therein. But in addition to what has just been stated concerning the creation of "atmosphere", arousing the prejudice of the jury, the prosecution placed testimony before the jury that in petitioner's study in New York there were photographs hanging on the walls thereof of Hitler and Goebbels (R-142, 146); that petitioner had protested to the editor of a magazine concerning an article published therein concerning Hitler and his maid (R-151-153), over defense objections; that the late isolationist Senator Lundeen, who had been assisted by petitioner in writing some speeches, had allegedly taken "kickbacks" from some of his employees (R-304-305); and placed on the witness stand for extended examination the convicted perjurer Hill concerning the large number of non-interventionists' reprints from the Congressional Record which he had obtained and mailed out or had mailed out (R-279, 290-301), without showing by such testimony or otherwise that petitioner had anything whatsoever to do therewith except in the instance of one speech by Senator Lundeen. As to this reprint Hill admitted that petitioner stated he was acting as an intermediary for the said Senator (R-283). Except the testimony as to this one speech, such evidence was objected to because the petitioner had not been connected by any evidence with such mailing out of reprints by witness Hill, but the objection was overruled (R-293). Later, the objection was renewed with a motion to strike but they were also overruled (R-297).

It was after this evidence had been introduced that there took place what the court below characterized as stage play on the part of this prosecuting attorney in having a large number of mail sacks brought before the jury (R-161-166). This episode was far more than harmless stage business on the part of the prosecutor, as the court below

seemed to think (R-341). It was coolly and deliberately calculated to support the testimony of the Witness Hill, as to the large number of reprints he had mailed out, and to create the impression in the minds of the jurors that petitioner had something to do with Hill's activities in this respect without it having been so established by the evidence.

It was because of the character of much evidence which the prosecution was allowed by the court to introduce without showing that petitioner was connected therewith; and that he was connected therewith as agent of a foreign principal; the inflammatory statements of the prosecutor to the jury during the course of the taking of evidence; and the character of closing argument which the court permitted the prosecutor to make to the jury, that the petitioner was convicted.

Even if the petitioner's construction of the amended subsection 3 of the Act, and of both the Secretary's regulations and Paragraph 11 of his registration form as not requiring him to report his activities on his own behalf should be in error—which we do not concede—the conduct of the prosecuting attorney and the action of the trial court in overruling defense objections to irrelevant, immaterial and incompetent evidence placed before the jury entitle the petitioner to the granting of this petition and to a reversal of the courts below.

IV.

THE PETITIONER WAS INDICTED FOR ONE OFFENSE, AND TRIED FOR ANOTHER, NEITHER OF WHICH WAS WITHIN THE 1938 ACT AS AMENDED BY THE 1939 ACT.

By way of summary and restatement of much of the argument under the preceding points II and III of this brief, we submit that subsection 3(c) of the 1938 Act as

amended by the 1939 Act did not require an agent of a foreign principal to report anything. It merely gave the Secretary of State permissive authority, but not mandatory duty to "fix" in the supplemental registration forms the activities of such details which the Congress had itself stated in section 2 of the Act for the original registration statements as the Secretary might deem necessary or desirable to have stated in the supplemental registrations.

The Secretary did not do this. Instead he issued the same form for the supplemental registrations as he had issued for the original registrations, except as to paragraph 15 which necessarily differed because of the specific requirement which Congress wrote into subsection 3(b) for supplemental registrations. Paragraphs 11 in both the original and supplemental registration forms did not request any activities of a registrant; instead they requested a "Comprehensive statement of nature of business of registrant".

So far as the supplemental registration forms are concerned, this paragraph was not in accordance with subsection 3(b) and is to that extent beyond the authority of the Secretary and void. *United States v. Symonds*, 120 U. S. 49; *United States v. Garlinger*, 169 U. S. 316.

But even if the paragraph 11 of the supplemental registration form be in accord with subsection 3(c) of the Act in requiring a comprehensive statement of nature of business of registrant, said paragraph did not require a statement of activities concerning the "details" which Congress has required in section 2 of the Act an agent report in his original registration statement and under section 3 should bring current in his supplemental registration. *Any such requirement that a supplemental registration should state all of his activities for himself or his foreign principal or both is as surely absent from the 1938 Act as amended as it*

is surely present in section 2 of the New Act of 1942. Most certainly paragraph 11 of the supplemental registration form did not ask for such activities.

Therefore, in being indicted—if he was lawfully indicted—for failure to report the activities charged in Counts II, III, and V of the indictment, the petitioner was not indicted for an offense stated in the 1938 Act as amended by the Act of 1939—an offense, we repeat, which is stated in the subsequent section 2 of the New Act of 1942.

The petitioner was tried by the Government before the jury with being a propagandist. This was admitted both in the opening address and in the closing argument by the prosecuting attorney to the jury. As heretofore stated, the prosecutor informed the jury in his opening address that the petitioner's book, *Spreading Germs of Hate*, would be the text of the Government in the trial and the obituary of the petitioner; in his closing argument he reminded the jury of his statement in his opening argument that the book would be the text of the Government and the epitaph of the petitioner. Both the promise and the boast of the prosecutor were made good in the trial by the use made by the prosecution of the book.

The bringing of the large number of mail sacks into the court room before the jury and the detailed testimony of Government's witness Hill as to the large numbers of various reprints which he had obtained from the Government Printing Office, paid for by money given to him by others than petitioner, and had mailed out was all a part of this effort to make petitioner out as a propagandist for Germany or some German principal without any evidence that petitioner had been such an agent-propagandist since prior to April 6, 1917. The same may be said with respect to the evidence of reprints mailed out by the War Debts Committee.

This is made doubly clear in the closing argument of the prosecuting attorney who,—after having read various extracts from the petitioner's book on propaganda in 1914-1918 and in absolute disregard of the fact that all agency relationships whatever between petitioner and his German principals had terminated long before—stated to the jury:

> "Ladies and gentlemen, that is what we American people were exposed to in this war. Personally, it is my feeling, and I think it is shared by all of us, that we have caught this thing before it was the ruination of all of us."

Even if petitioner had been properly tried for being a propagandist for the German Library of Information prior to July 1941, when his contract was cancelled, and for the Munich newspaper prior to September 1941, when that contract was cancelled—and when we were not in the war but were by law a neutral nation, there was not a word from the prosecuting attorney to the jury that on and after April 6, 1917, petitioner sold Liberty Bonds for the United States and received official thanks for the effectiveness of his patriotic advice!

Conclusion.

Upon the whole case it is submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

O. R. McGuire,
Attorney for Petitioner.

APPENDIX.

APPENDIX.

Statutes Involved.

The Act of June 8, 1938, c. 327, (52 Stat., 631), as amended by the Act of August 7, 1939, c. 521, (53 Stat., 1244) is as follows:

"To amend an Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes', approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session).

"Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That Section 1 of the Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes', approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session), be, and it is hereby, amended to read as follows:

"That as used in this Act—

"(a) The term 'person' means an individual, partnership, association, or corporation;

"(b) The term 'United States' include the United States and any place subject to the jurisdiction thereof;

"(c) The term 'foreign principal' includes the government of a foreign county, a political party, of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation, or political organization, or a domestic organization subsidized, directly or indirectly, in whole or in part by any of the entities described herein;

"(d) The term 'agent' of a 'foreign principal' means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or an agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives compensation from or is under the direction of a foreign principal:

Provided, however, That such term shall not include—

"(1) a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States; nor

"(2) any official of a foreign government recognized by the United States as a government other than a public-relation counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States; nor

"(3) any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States; nor

"(4) any person performing only private, non-political, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal; nor

"(5) any person engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.

"e) The Term 'Secretary' means the Secretary of State of the United States."

"Sec. 2. That section 3 of the Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes,' approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session), is hereby amended to read as follows:

"Sec. 3. Every person who has filed a registration statement required by section 2 shall, within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement, under oath, on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—

"(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period;

"(b) The amount and form of compensation received by such person for acting as agent for a foreign principal which has been received during such six months' period either directly or indirectly from any foreign principal; and

"(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

"Sec. 3. That section 4 of the Act entitled 'An act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes', approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session), is hereby amended to read as follows:

"Sec. 4. The Secretary shall retain in permanent form all statements filed under this Act, and such statements shall be public records and open to public examination, and inspection at all reasonable hours, under such rules and regulations as the Secretary may prescribe:

PROVIDED, That the Secretary is hereby authorized to withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of this Act."

Sections 2, 3, 5, 6 and 7 of the original Act of June 8, 1938, remained unamended as follows:

"Sec. 2. Every person who is now an agent of a foreign principal shall, within thirty days after this Act takes effect, and every person who shall hereafter become an agent of a foreign principal shall forthwith file with the Secretary a registration statement, under oath, on a form prescribed by the Secretary which shall set forth—

(a) The name, business address, and residence address of the registrant;

(b) The name of the foreign principal or other person or organization for which such person is acting as agent;

(c) A copy of all contracts of employer under which such person acts or agrees to act as such agents,

if written, or a full statement of the terms and conditions thereof, if oral;

(d) The date when each such contract was made, the date of commencement of activity thereunder, and the period during which such contract is to be in effect;

(e) The compensation to be paid, if any, and the form and time of payment, under such contract;

(f) The name of every foreign principal or other person or organization which has contributed or which has promised to contribute to the compensation provided in such contract; and

(g) If the registrant be a partnership, association, or corporation, a true and complete copy of its charter, articles of incorporation, co-partnership, association, constitution, and bylaws, and any other instrument or instruments relating to its organization, powers and purposes."

* * * * *

"Sec. 5. Any person who wilfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or wilfully omits to state any material fact required to be stated therein shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both.

"Sec. 6. The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act.

"Sec. 7. This Act shall take effect on the ninetieth day after the date of its enactment."

[Public Law 532—77th Congress]
[Chapter 263—2d Session]
[S. 2399]

AN ACT.

To amend the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assem-

bled, That the Act of June 8, 1938 (52 Stat. 631, U. S. C., title 22, sec. 233 (a) to sec. 233 (g)), entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", as amended, is hereby amended to read as follows:

"POLICY AND PURPOSE

"It is hereby declared to be the policy and purpose of this Act to protect the national defense internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.

"DEFINITIONS

"SECTION 1. As used in and for the purposes of this Act—

"(a) The term 'person' includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

"(b) The term 'foreign principal' includes—

"(1) a government of a foreign country and a foreign political party;

"(2) an individual affiliated or associated with, or supervised, directed, controlled, financed, or subsidized, in whole or in part, by any foreign principal defined in clause (1) of this section 1 (b);

"(3) a person outside of the United States, unless it is established that such person is an individual and is a citizen of and domiciled within the United States or that such person is not an individual, is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States, and has its principal place of business within the United States. Nothing in this clause (3) shall limit the operation of clause (5) of this section 1 (b);

"(4) a partnership, association, corporation, organization, or other combination of individuals organized

under the laws of, or having its principal place of business in, a foreign country;

"(5) a domestic partnership, association, corporation, organization, or other combination of individuals, subsidized directly or indirectly, in whole or in part, by any foreign principal defined in clause (1), (3), or (4) of this section 1 (b);

"(c) Except as provided in section 1 (d) hereof, the term 'agent of a foreign principal' includes—

"(1) any person who acts or agrees to act, within the United States, as, or who is or holds himself out to be whether or not pursuant to contractual relationship, a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal;

"(2) any person who within the United States collects information for or reports information to a foreign principal; who within the United States solicits or accepts compensation, contributions, or loans, directly or indirectly, from a foreign principal; who within the United States solicits, disburses, dispenses, or collects compensation, contributions, loans, money, or anything of value, directly or indirectly, for a foreign principal; who within the United States acts at the order, request, or under the direction, of a foreign principal;

"(3) any person who assumes or purports to act within the United States as an agent of a foreign principal in any of the respects set forth in clauses (1) and (2) of this section 1 (c); and

"(4) any person who is an officer or member of the active or reserve military, naval, or other armed forces of any foreign principal defined in clause (1) of section 1 (b) hereof, or who is an officer of or employed by any such foreign principal; and proof of any affiliation or employment, specified in this clause (4), of any person within a period of five years previous to the effective date of this Act shall create a rebuttable presumption that such person is an agent of a foreign principal;

"(d) The term 'agent of a foreign principal' does not include any news or press service or association organized under the laws of the United States or of any State or

other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the Postmaster General a sworn statement in compliance with section 2 of the Act of August 24, 1912 (37 Stat. 553) as amended, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in clause (1), (2), or (4) of section 1 (b) hereof, or by any agent of a foreign principal required to register under this Act;

"(e) The term 'government of a foreign country' includes any person or group of persons exercising sovereign *de facto* or *de jure* political jurisdiction over any country other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign *de facto* or *de jure* authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

"(f) The term 'foreign political party' includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies or relations of a government of a foreign country or a subdivision thereof;

"(g) The term 'public-relations counsel' includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any matter pertaining to political or public interests, policies, or relations;

"(h) The term 'publicity agent' includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

"(i) The term 'information-service employee' includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

"(j) The term 'political propaganda' includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this section 1 (j) the term 'disseminating' includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails;

"(k) The term 'registration statement' means the registration statement required to be filed with the Attorney General under section 2 (a) hereof, and any supplements thereto required to be filed under section 2 (b) hereof, and

includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

"(l) The term 'American republic' includes any of the states which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940;

"(m) The term 'United States', when used in a geographical sense, includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, including the Philippine Islands, and all other places now or hereafter subject to the civil or military jurisdiction of the United States;

"(n) The term 'prints' means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter.

"REGISTRATION

"SEC. 2. (a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by this section 2 (a) and section 2 (b) hereof or unless he is exempt from registration under the provisions of this Act. Except as hereinafter provided, every person who is an agent of a foreign principal on the effective date of this Act shall, within ten days thereafter and every person who becomes an agent of a foreign principal after the effective date of this Act shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath, on a form prescribed by the Attorney General, of which one copy shall be transmitted promptly by the Attorney General to the Secretary of State for such comment, if any, as the Sec-

retary of State may desire to make from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act. The registration statement shall include the following, which shall be regarded as material for the purposes of this Act:

"(1) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

"(2) Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

"(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each, unless, and to the extent, this requirement is waived in writing by the Attorney General; the name and address of every foregin principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party;

"(4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no con-

tract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal;

"(5) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

"(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or as any other person other than a foreign principal and which requires his registration hereunder;

"(7) The name, business, and residence addresses, and, if an individual, the nationality, of any person who has within the preceding sixty days contributed or paid money or anything of value to the registrant in connection with any of the activities referred to in clause (6) of this section 2 (a) and the amount or value of the same;

"(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in any way in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person;

"(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

"(10) Such other statements, information, or documents pertinent to the purposes of this Act as the At-

torney General, having due regard for the national security and the public interest, may from time to time require;

"(11) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

"(b) Every agent of a foreign principal who has filed a registration statement required by section 2 (a) hereof shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under section 2 hereof accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), (6), and (9) of section 2 (a) hereof, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this Act, he may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

"(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority ~~of the board of~~ directors thereof or persons performing the functions of directors, if any.

"(d) The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this Act and the regulations thereunder ~~on~~ the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the

merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this Act, for willful failure to file a registration statement or supplement thereto when due or for a willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

"(e) If any agent of a foreign principal, required to register under the provisions of this Act, has previously thereto registered with the Attorney General under the provisions of the Act of October 17, 1940 (54 Stat. 1201), the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of the Act of October 17, 1940 (54 Stat. 1201).

"EXEMPTIONS

"SEC. 3. The requirements of section 2 (a) hereof shall not apply to the following agents of foreign principals:

"(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

"(b) Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

"(c) Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, pub-

licity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

"(d) Any person engaging or agreeing to engage only in private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal or in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 48), and such rules and regulations as may be prescribed thereunder;

"(e) Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

"(f) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communication or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to and retention for the duration of this Act by the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the Government of which such

person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee.

FILING AND LABELING OF POLITICAL PROPAGANDA

"SEC. 4. (a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, send to the Librarian of Congress two copies thereof and file with the Attorney General one copy thereof and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal.

"(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth that the person transmitting such political propaganda or causing it to be transmitted is registered under this Act with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of each of his foreign principals; that, as required by this Act, his registration statement is available for inspection at and copies of

such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the Act does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.

"(c) The copies of political propaganda required by this Act to be sent to the Librarian of Congress shall be available for public inspection under such regulations as he may prescribe.

"(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688), and of all foreign prints excluded from the mails under authority of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230).

"Notwithstanding the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688), and of Section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230) the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

"Books and Records

"Sec. 5. Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, as the Attorney General, having due regard for the national security and the public interest, may by regulation pre-

scribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such statutes. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

"PUBLIC EXAMINATION OF OFFICIAL RECORDS.

"SEC. 6. The Attorney General shall retain in permanent form one copy of all registration statements and all statements concerning the distribution of political propaganda furnished under this Act, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of this Act.

"LIABILITY OF OFFICERS

"SEC. 7. Each officer, or person performing the functions of an officer, and each director, or person performing the functions of a director, or an agent of a foreign principal which is not an individual shall be under obligation to cause such agent to execute and file a registration statement and supplements thereto as and when such filing is required under sections 2 (a) and 2 (b) hereof and shall also be under obligation to cause such agent to comply with all the requirements of sections 4 (a), 4 (b), and 5 and all other requirements of this Act. In case of failure of any

such agent of a foreign principal to comply with any of the requirements of this Act, each of its officers, or persons performing the functions of officers, and each of its directors, or persons performing the functions of directors, shall be subject to prosecution therefor.

"ENFORCEMENT AND PENALTIES

"SEC. 8. (a) Any person who—

"(1) willfully violates any provision of this Act or any regulation thereunder, or

"(2) in any registration statement or supplement thereto or in any statement under section 4 (a) hereof concerning the distribution of political propaganda or in any other document filed with or furnished to the Attorney General under the provisions of this Act willfully make a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

"(b) In any proceeding under this Act in which it is charged that a person is an agent of a foreign principal with respect to a foreign principal outside of the United States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

"(c) Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provision of this Act or any regulation thereunder shall be subject to deportation in the manner provided by sections 19 and 20 of the Immigration Act of 1917 (39 Stat. 889, 890), as amended.

"(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 1 (j) hereof in the form of prints or in any other form reasonably adapted to, or reasonbly appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited

diplomatic representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.

"APPLICABILITY OF ACT

"SEC. 9. This Act shall be applicable in the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, including the Philippine Islands, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.

"RULES AND REGULATIONS

"SEC. 10. The Attorney General may at any time make, prescribe, amend, and rescind such rules, regulations, and forms as he may deem necessary to carry out the provisions of this Act.

"REPORTS TO THE CONGRESS

"SEC. 11. The Attorney General shall, from time to time, make a report to the Congress concerning the administration of this Act, including the nature, sources, and content of political propaganda disseminated or distributed.

"SEPARABILITY OF PROVISIONS

"SEC. 12. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

"SEC. 13. This Act is in addition to and not in substitution for any other existing statute.

"SHORT TITLE

"SEC. 14. This Act may be cited as the 'Foreign Agents Registration Act of 1938, as amended'."

TRANSFER OF ADMINISTRATION

SEC. 2. Upon the effective date of this Act, all powers duties, and functions of the Secretary of State under the Act of June 8, 1938 (52 Stat. 631), as amended, shall be

transferred to and become vested in the Attorney General, together with all property, books, records, and unexpended balances of appropriations used by or available to the Secretary of State for carrying out the functions devolving on him under the above-cited Act. All rules, regulations, and forms which have been issued by the Secretary of State pursuant to the provisions of said Act, and which are in effect, shall continue in effect until modified, superseded, revoked, or repealed.

EFFECTIVE DATE

SEC. 3. This Act shall take effect on the sixtieth day after the date of its approval, except that prior to such sixtieth day the Attorney General may make, prescribe, amend, and rescind such rules, regulations, and forms as may be necessary to carry out the provisions of this Act.

Approved, April 29, 1942.

AGENTS OF FOREIGN PRINCIPALS AND OF FOREIGN GOVERNMENTS

LAWS AND REGULATIONS ADMINISTERED BY THE SECRETARY OF STATE GOVERNING THE REGISTRATION OF AGENTS OF FOREIGN PRINCIPALS AND THE NOTIFICATION OF AGENTS OF FOREIGN GOVERNMENTS

PART I

REGISTRATION OF AGENTS OF FOREIGN PRINCIPALS

Chapter I—Authority

The act approved June 8, 1938 (52 Stat. 631), entitled "AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the act approved August 7, 1939 (Public, No. 319, 76th Cong., 1st sess.) reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

(Statute as Amended omitted.)

Under the authority of the aforementioned provisions of law and in compliance therewith, the Secretary of State prescribes the following regulations:

Chapter II—Definitions

As used in these regulations and forms, unless the context otherwise requires—

(1) The term *person* means an individual, partnership, association, or corporation.

(2) The term *Secretary* means the Secretary of State of the United States.

(3) The term *act* means the act approved June 8, 1938 (Public, No. 583, 75th Cong., 3d sess.), entitled "AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the act approved August 7, 1939 (Public, No. 319, 76th Cong., 1st sess.)

(4) The term *section* means a section of the act.

(5) The term *regulations* means all rules, regulations, and forms prescribed by the Secretary pursuant to the act.

(6) The term *government of a foreign country* means any person or group of persons exercising sovereign political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which authority or functions are directly or indirectly delegated or permitted. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority, whether such faction or body of insurgents has or has not bee recognized by the United States.

(7) The term *political party of a foreign country* means any group of persons in a country other than the United States, having for an aim the establishment or the administration of a government or of a governmental system.

(8) The term *person domiciled abroad* means a person who has outside the United States a principal establishment or permanent home.

(9) The term *foreign business* means any entity organized or set up under a jurisdiction of a country other than the United States and having its principal place of business outside the United States, for the purpose of livelihood or profit.

(10) The term *foreign partnership* means an association of two or more persons formed outside the United States to engage jointly in any enterprise or undertaking.

(11) The term *foreign association* means an unincorporated entity or group of persons formed outside the United States and acting for a common purpose.

(12) The term *foreign corporation* means a legal entity created by or under the laws of a country other than the United States.

(13) The term *foreign political organization* means a group of persons organized and existing outside the United States which is engaged in political activity or in any activity devoted in whole or in part to the establishment or the administration of a government or of a governmental system.

(14) The term *public-relations counsel* means any person who directly or indirectly informs, advises, or in any other way represents a principal in any matters pertaining to political interests or public relations or public policy: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(15) The term *publicity agent* means any person who is directly or indirectly engaged in the placing or disseminating within the United States of oral, written, or pictorial information or matter of any kind for publication in any manner, including publication through advertising, books, periodicals, newspapers, lectures, broadcasts, moving-picture shows, or otherwise: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in the dissemination of material, information, or ideas in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(16) The term *duly accredited diplomatic or consular officer of a foreign government who is so recognized by*

the Department of State of the United States shall include any representative of a foreign government who functions as a diplomatic or consular officer in the United States and whose diplomatic or consular status is of record in the Department of State of the United States.

(17) The term *private activities in furtherance of bona fide trade or commerce* means activities ordinarily and customarily performed by persons for private livelihood or profit, as distinguished from activities of a political or other character, whether or not in the guise of trade or commerce.

(18) The term *nonpolitical activities in furtherance of bona fide trade or commerce* means such activities as are religious, educational, professional, scientific, or related to the fine arts, which do not in any essential respect relate to the establishment or conduct of a government or relations between one government and another.

(19) The term *financial activities in furtherance of bona fide trade or commerce* means activities in which exchange of money or its equivalent is involved through the normal channels of finance, and includes the normal incidents of such transactions.

(20) The term *mercantile activities in furtherance of bona fide trade or commerce* means activities directly concerned with the business of procuring, buying, selling, merchandising, warehousing, forwarding, transporting, or processing goods, products, or property of any kind.

(21) The term *other activities in furtherance of bona fide trade or commerce* as used in subsection (d) of the first section of the act, means services rendered in connection with private activities, nonpolitical activities, financial activities, or mercantile activities as herein defined.

(22) The term *furtherance of bona fide trade or commerce* means engaging in good faith in the lawful exchange of commodities, services, or property of any kind. Such term shall not include any political activities or activities involving the dissemination of information not exclusively concerned with the lawful exchange of commodities, services, or property.

(23) The term *registration statement* means the statement submitted to the Secretary for filing pursuant to the terms of the act and includes all documents and papers supplementary thereto.

(24) The term *registrant* means the person named in the registration statement and in whose behalf the registration statement is submitted to the Secretary for filing.

Chapter III—Outline of Act

The act requires the registration of:

any person who *acts* or *engages to act* or *agrees to act as*

public-relations counsel,
publicity agent,
agent,
servant,
representative,
attorney for, or

any person who receives compensation from, or is under the direction of:

the government of a foreign country,
a political party of a foreign country,
a person domiciled abroad,
a foreign business,
a foreign partnership,
a foreign association,
a foreign corporation,
a foreign political organization or a domestic organization subsidized directly or indirectly in whole or in part by any of the above.

The *only* persons within these categories exempt from the requirement of registration under the act are:

persons who function in the United States as diplomatic or consular officers and whose diplomatic or consular status is of record in the Department of State of the United States,

persons performing only:

private activities in furtherance of bona fide trade or commerce,
nonpolitical activities in further of bona fide trade or commerce,
financial activities in furtherance of bona fide trade or commerce,
mercantile activities in furtherance of bona fide trade or commerce,
other activities in furtherance of bona fide trade or commerce, or

activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits, or of the fine arts,

and persons whose status is described in either of the following two paragraphs:

(1) Any official of a foreign government recognized by the United States as a government, other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States.

(2) Any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States.

Chapter IV—Section 2 of the Act

(1) Every person required to register under the terms of section 2 of the act and regulations issued pursuant thereto, shall submit to the Secretary a registration statement on a form similar to that printed below. Registration statements must be signed and sworn to before a notary public or other person authorized by law to administer oaths before they are transmitted to the Secretary of State. Blank forms will be furnished by the Secretary upon request.

Registration No. .....

Date of Registration .....

(Not to be filled in by registrant)

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

REGISTRATION STATEMENT

For persons required to register with the Secretary of State pursuant to section 2 of the act (Public, No. 583, 75th

Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public, 319, 76th Cong., 1st sess.), approved August 7, 1939.

(NOTE.—ALL spaces must be filled in. Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.)

1. Name of registrant .....
2. Status of registrant (individual, partnership, association, or corporation) .....
3. Principal business address .....
4. Other places of business in the United States or elsewhere .....

5. Residence address, or addresses, if more than one .....

6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof .....

7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent .....

8. Address, or addresses, if more than one, of foreign principal .....

9. Nationality of foreign principal, or principals, if more than one .....

10. Nature of business of foreign principal, or principals .....

11. Comprehensive statement of nature of business of registrant .....

12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein .....

13. The following information must be furnished, whether contract of employment of registrant is written or oral:

(*a*) Dates of contracts under which registrant is employed .....

(*b*) Dates of commencement of activity thereunder .....

(*c*) Periods of duration of contracts of employment. (If not known definitely, approximations may be made.) .....

14. Compensation to be paid to or income to be received by registrant and form and time of payment, under contracts or terms of employment, or otherwise .....

15. Names of all foreign principals, or other persons or organizations which have contributed, do now contribute, or have undertaken to contribute, to compensation referred to in paragraph 14 above .....

16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organization, powers, and purposes, submitted herewith in compliance with the act .....

17. (*a*) Nationality of registrant .....

(*b*) If American-born, date and place of birth .....

(*c*) If naturalized, date and place of naturalization .....

(*d*) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc .....

18. Official designation of registrant .....

19. Date of execution of Registration Statement .....

The undersigned swears (affirms) that he has read the act (Public, No. 583, 75th Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public, No. 319, 76th Cong., 1st sess.), approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Registration Statement submitted pursuant to such act and regulations, and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(If registrant is a partnership, association, or corporation, the signature shall be that of the duly authorized representative.)

.....
(Signature of registrant)

.....
(Type or print name)

Subscribed and sworn to before me at ....., this ..... day ....., 19....

.....
(Title)

My commission expires ....., 19....

(2) Registration statements should be in English. If in a foreign language, they must be accompanied by an English translation, certified under oath by the translator, be-

fore a notary public or other person authorized by law to administer oaths for general purposes, as a true and accurate translation. The statements, with the exception of signature, should be typewritten but will be accepted if written legibly in ink.

(3) All spaces in the registration statement form must be properly filled in. Registration statements found not to be in proper form or lacking in essential details will not be accepted by the Secretary for filing, and such registration statements shall not be deemed to have been filed in compliance with the act.

(4) Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.

(5) Acceptance by the Secretary of a registration statement submitted for filing shall not necessarily signify a full compliance with the act on the part of the registrant, and such acceptance shall not preclude prosecution as provided for in the act for a false statement of a material fact or the willful omission of a material fact required to be stated therein.

(6) The date on which a registration statement, executed in full compliance with the act and regulations, is received by the Secretary for filing, shall be considered the date of the filing of such registration statement pursuant to the act.

(7) Papers and documents already filed with the Secretary pursuant to the act may be incorporated by reference in any registration statement subsequently submitted to the Secretary for filing, provided such papers and documents are adequately identified in the registration statement in which they are incorporated by reference.

(8) Every registration statement executed and submitted to the Secretary by or on behalf of a partnership, association, or corporation, shall contain or be accompanied by a concise statement of the applicable provisions of the partnership agreement, articles of incorporation, bylaws or similar documents, indicating the right of the person

who signs and submits the registration statement for filing to take such action on behalf of the partnership, association, or corporation, and a statement under oath that all such requirements have been complied with and that the person signing and submitting the registration statement is fully authorized to do so.

(9) A separate registration statement, under the act, must be filed with the Secretary by each person required to register.

(10) The Secretary should be notified promptly upon the cessation of the agency or activity by virtue of which a person has been required to file a registration statement or submit information to the Secretary pursuant to the act and regulations prescribed thereunder.

(11) The filing of a registration statement by a partnership, association, or corporation shall not preclude the necessity of the filing of a similar registration statement, as required under the act, by such individual members, employees, associates, and affiliates of such registrant, as are required to register under the act.

(12) Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration.

(13) Registration pursuant to the act is required in the case of agents of foreign principals only. Subagents are not considered subject to the requirement of registration. A subagent is considered to be a person who is not engaged in any activities of a responsible character and who acts under the immediate and direct supervision of a registered agent or whose name, address, and functions are set forth in the registration statement submitted by the agent.

(14) Branch offices or subsidiaries of a registrant engaged in the same activity as that of such registrant will not be required to file separate registration statements if their names and addresses are included in the registration statement filed by the registrant pursuant to the act.

(15) Subsidiary or branch agencies of foreign entities in the United States are considered as occupying a dual status, i. e., that of a foreign principal and that of an agent of a foreign principal, and hence in their latter capacity are required to register if engaged in activities of a charac-

ter not specifically excepted by the terms of the act and regulations. Officers of such agencies, however, need not register if their names and positions are indicated in the registration statement submitted by the agency.

(16) Associations and organizations, the membership of which includes one or more foreign principals, shall, to the extent of such foreign membership, be considered agents of foreign principals, and hence subject to the requirement of registration pursuant to the act unless their activities are of a character specifically excepted by the terms of the act and regulations.

(17) Activities connected in any way with the establishment or conduct of a foreign government shall not be considered to fall within any of the exceptions described in paragraphs (14) to (22), inclusive, of chapter II, part I, of the regulations, and persons undertaking to engage in such activities shall be considered subject to the requirement of registration.

(18) The status of officials of foreign governments and members of the staff of or persons employed by duly accredited diplomatic or consular officers of foreign governments, claiming exemption from the requirement of registration under the provisions of the first section of the act, should be regularized by a notification addressed to the Secretary of State. Such notification must include the full name, nationality, business and residence addresses of the person claiming exemption from the requirement of registration under the act, together with the name of the foreign government being served, a detailed statement of the present and proposed activities of such person, and an indication of the date of assumption of duties in the United States and the approximate duration thereof.

(19) Notification under paragraph (18) above must be renewed whenever the purpose, scope, or nature of the agency described therein is changed, and in any case every 12 months throughout the duration of the agency.

(20) Persons who have submitted information in full compliance with the provisions of paragraph (18) above, shall be considered to have complied with the provisions of the act of June 15, 1917 (40 Stat. 226; 22 U. S. C. 233), so far as such provisions relate to the requirement of notification to the Secretary of certain agents of foreign governments in the United States.

(21) The Secretary of State should be informed promptly upon the termination of activities described in notifications submitted pursuant to the provisions of paragraph (18) above.

(22) The Secretary may withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of the act. Requests for such withdrawals shall be submitted to the Secretary in the form of an affidavit subscribed and sworn to before a notary public, identifying the registration statement, the withdrawal of which is desired, and stating that the agency relationship described therein has been terminated and that the activities of the registrant under such agency relationship have ceased. Registration statements which are withdrawn from the public records under the provisions hereof will be retained in the permanent files of the Department of State.

Chapter V—Section 3 of the Act

(1) Every person required to submit statements to the Secretary for filing in compliance with the terms of section 3 of the act and under the regulations issued pursuant to the act shall submit such statements under oath on a form similar to that printed below. Blank forms will be furnished by the Secretary upon request.

(2) The regulations set forth under chapter IV, part I, hereof, with respect to registration statements submitted to the Secretary under section 2 of the act, shall apply with equal force and effect to statements required to be submitted to the Secretary for filing under section 3 of the act.

Registration No. .....

Date of Registration .....

(Not to be filled in by registrant)

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

SUPPLEMENTAL REGISTRATION STATEMENT

For persons required to submit statements to the Secretary of State for filing in compliance with section 3 of the

act (Public, No. 583, 75th Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public, No. 319, 76th Cong., 1st sess.), approved August 7, 1939.

(NOTE: Except in paragraph 1, if answers would be exactly the same as answers made to similar questions in a previous statement filed with the Secretary under the act of June 8, 1938, the word "same" may be written in the appropriate spaces below with an indication of the number and date of the previous statement filed. All spaces must be filled in.)

1. Name of registrant .....
2. Status of registrant (individual, partnership, association, or corporation) .....
3. Principal business address .....
4. Other places of business in the United States or elsewhere .....
5. Residence address, or addresses, if more than one .....
6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof .....
7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent .....
8. Address, or addresses, if more than one, of foreign principal .....
9. Nationality of foreign principal, or principals, if more than one .....
10. Nature of business of foreign principal, or principals .....
11. Comprehensive statement of nature of business of registrant .....

12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein .....

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13. The following information must be furnished, whether contract of employment of registrant is written or oral:

(*a*) Dates of contracts under which registrant is employed .....

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(*b*) Dates of commencement of activity thereunder .....

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(*c*) Periods of duration of contracts of employment. (If not known definitely, approximations may be made.) .....

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14. Compensation to be paid to or income to be received by registrant and form and time of payment, under contracts or terms of employment, or otherwise .....

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15. Amount and form of compensation received by registrant during period of 6 months immediately succeeding last statement filed with the Secretary pursuant to the act .....

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16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organizations, powers and purposes, submitted herewith in compliance with the act .....

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17. (*a*) Nationality of registrant .....

(*b*) If American-born, date and place of birth .....

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(*c*) If naturalized, date and place of naturalization .....

(*d*) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc .....

18. Official designation of registrant .....

19. Date of execution of Registration Statement .....

The undersigned swears (affirms) that he has read the act (Public, No. 583, 75th Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public No. 319, 76th Cong., 1st sess.), approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Supplemental Registration Statement submitted pursuant to such act and regulations, and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

(If registrant is a partnership, association, or corporation, the signature shall be that of its duly authorized representative.)

.....
(Signature of registrant)

.....
(Type or print name)

Subscribed and sworn to before me at .....
....., this ..... day of ....., 19 ..

.....
(Title)

My commission expires ....., 19 ..

Chapter VI—Inspection of Registration Statements

(1) Registration statements filed with the Secretary pursuant to the act will, with the exception of statements withdrawn under the provisions of paragraph (22), chapter IV, part I, above, be available for public inspection in the Department of State, Washington, D. C., during all business hours, i. e., from 9 a. m. to 4:30 p. m. on each business day excepting Saturday, and from 9 a. m. to 1 p. m. on Saturdays.